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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW HAMPSHIRE

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UNITED STATES OF AMERICA

v.

JOHNATHON IRISH

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1:19-cr-251-LM-1  
February 12, 2020  
8:07 a.m.

TRANSCRIPT OF JURY TRIAL  
DAY FOUR - MORNING SESSION  
BEFORE THE HONORABLE LANDYA B. McCAFFERTY

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1 P R O C E E D I N G S

2 THE CLERK: The Court has before it for  
3 consideration today United States vs. Johnathon Irish,  
4 19-cr-251-LM, jury trial day four.

5 THE COURT: All right. Okay. I've got a slew  
6 of last-minute motions. I have looked at them. We can  
7 obviously discuss them. Let me get to --

8 MR. FALKNER: One of them, your Honor, as I  
9 was re-going through your draft instructions, I would  
10 withdraw the one as to the constitutional right because  
11 I think it's already included --

12 THE COURT: It's already in there. It's in  
13 bold because we obviously know it's his right to  
14 exercise, so we'll let him do that.

15 All right. So that's -- Document 32 is moot,  
16 denied as moot, because the instruction's already  
17 included.

18 All right. And I am not going to have a  
19 special verdict form in the case. I appreciate the  
20 arguments being made in Document 28, but I think my  
21 instructions are fairly clear on what the jury needs to  
22 do.

23 Do you want to be heard any more on that,  
24 Attorney Falkner?

25 MR. FALKNER: (Shakes head.)

1 THE COURT: Okay.

2 MR. FALKNER: I'd just rest on the arguments  
3 that I've made.

4 THE COURT: All right.

5 And let's talk about requests for missing  
6 witness jury instruction, Document -- it's Document 29  
7 and 31. I think 31 is just a corrected version of 29,  
8 so let's deal with 29 and 31, this missing witness  
9 issue.

10 And you're talking about Stephanie Irish; is  
11 that correct, Attorney Falkner?

12 MR. FALKNER: That's correct, your Honor.

13 THE COURT: And my memory of this is that all  
14 the testimony about the multiple times they had contact  
15 with her came through cross-examination, if I'm not  
16 mistaken.

17 MR. FALKNER: That's correct.

18 THE COURT: Okay. And why is Stephanie Irish  
19 someone that you could not call as a witness?

20 MR. FALKNER: It's not that I -- that I could  
21 not call her. The issue is that the government has  
22 made -- has in-depth contact with her. She has  
23 interviewed with them repeatedly; she's given them what  
24 they describe as helpful and what they describe as  
25 truthful evidence.

1           She's in divorce proceedings against  
2 Mr. Irish, so one could reasonably infer that her  
3 testimony will be adverse to him as she would have a  
4 motive, a strong motive, to testify adverse to him in  
5 that on the facts of this case, the investigation begins  
6 at the time that she leaves him. She's now in ongoing  
7 divorce proceedings against him and cooperating with the  
8 FBI against him.

9           So it's not that she could not be called,  
10 but certainly the -- I think on this evidence, it's a  
11 much -- it would -- it would make sense for the  
12 government to be calling her in these circumstances.

13           She lives in the home where these firearms are  
14 and she's got all this information that's helpful to the  
15 government that she's providing to the government and  
16 she continues to be cooperative with them and yet they  
17 don't call her as a witness.

18           THE COURT: Okay. Now, the instruction  
19 itself, the pattern instruction, Document 31-1,  
20 specifically tells the jury, "You're not required to  
21 draw that inference, but you may do so. No such  
22 inference is justified if the witness is equally  
23 available to both parties."

24           MR. FALKNER: And I would just say that she's  
25 not equally available. She is in constant contact and

1 cooperation with the government.

2 THE COURT: So the -- I heard testimony that  
3 Mr. Irish and Stephanie Irish have children. They must  
4 see each other. There must be some availability for  
5 Stephanie Irish to be served a subpoena. No?

6 MR. FALKNER: There may be. There's no  
7 testimony about service of a subpoena, that's true.  
8 But --

9 THE COURT: No, I'm just asking as a practical  
10 matter, obviously. I'm just wondering if this -- if  
11 this instruction's warranted.

12 I mean, I don't know specifically, but  
13 obviously they are in divorce proceedings, so --

14 MR. FALKNER: The -- it's my understanding --  
15 oh, I apologize, your Honor.

16 THE COURT: That's okay. Go ahead.

17 MR. FALKNER: It's my understanding as to the  
18 children that they're in DCYF custody, not in the  
19 custody of Stephanie Irish.

20 THE COURT: Okay. All right.

21 Okay. Let me hear from the government.

22 MS. KRASINSKI: There are a couple of issues,  
23 the first obviously being that the defendant could have  
24 served her with a subpoena and had her here to testify,  
25 could have included her on a witness list and did not.

1           There are other issues related to her  
2 testimony. Only the defendant could waive some of the  
3 spousal communication privilege that would apply here.  
4 So the government, as a practical matter, even if it  
5 subpoenaed her, there are certain things that the  
6 government could not elicit from her.

7           So even as a practical matter, I think the  
8 defendant, actually, given that it's his decision  
9 whether or not to waive spousal communication  
10 privileges, she's actually more available to call as a  
11 witness by him than the government for that issue alone.

12           A lot of the witness testimony about specific  
13 instances of possession, according to that witness  
14 testimony, occurred when she was not present. And just  
15 sort of in the context of this trial, defense counsel  
16 specifically asked to exclude references of her speaking  
17 to the FBI about the defendant's possession of the  
18 firearm, for example, specifically sought to exclude  
19 Government's Exhibit 4.

20           And so to now come back and say, well, you  
21 didn't introduce any evidence about Stephanie Irish and  
22 what she would say, you haven't called her as a witness,  
23 and then to elicit testimony on cross-examination that  
24 Stephanie Irish provided information that was helpful to  
25 the government when the government didn't introduce that

1 evidence at all, it seems to me inconsistent with now  
2 requesting a missing witness instruction.

3 THE COURT: All right. Do you want to be  
4 heard any further, Mr. Falkner?

5 MR. FALKNER: I'm sorry. I'm just trying to  
6 recall what is Government's Exhibit 4.

7 MS. KRASINSKI: Those were the text messages,  
8 the photographs, that Ms. Irish texted to Agent  
9 Christiana of --

10 THE COURT: And I excluded those pretrial.

11 MS. KRASINSKI: Yes, your Honor.

12 MR. FALKNER: And those were excluded on the  
13 basis that the government wasn't calling Ms. Irish as a  
14 witness, so I don't know how that's inconsistent.

15 But, secondly, in terms of any spousal  
16 privilege, the New Hampshire state case law is very  
17 clear that the spousal privilege applies to marital  
18 communications, but it wouldn't apply to any of her  
19 observations about the firearms and it may well not even  
20 apply to many of the marital communications.

21 But private marital communications certainly  
22 do not seem to be the -- the most important substance  
23 that the government would be eliciting her. We're  
24 talking about the possession of the firearms in this  
25 case and certainly whether she had possession of the



1 firearms or whether Mr. Irish had possession of the  
2 firearms is an important issue for the jury. And I  
3 think to say that he might be able to object to some of  
4 their conversations is -- does not mean that she's not  
5 available as a witness.

6 THE COURT: Okay. I'm going to deny the  
7 request. I'm not persuaded that the request is  
8 warranted for the reasons the government has argued. I  
9 don't think the Exhibit 4 moves the ball on the  
10 argument, but I do agree with the government with  
11 respect to the other arguments and I am not persuaded  
12 that you have demonstrated that she would have been  
13 either favorably disposed to testify on behalf of the  
14 government or peculiarly available to the government.

15 And as I do recall, the government didn't  
16 attempt to really introduce evidence of their heavy  
17 reliance or conversations or communications with her.  
18 That came out through cross-examination.

19 I am going to deny Document 31 and 29.

20 All right. Let's move on to the other issues  
21 that we need to decide in the case.

22 What are the other jury instruction issues  
23 that need to be discussed before I turn them into a  
24 final document?

25 MR. FALKNER: Could I just ask, your Honor,

1 before we move on, am I prohibited from making any  
2 argument along those lines or --

3 THE COURT: Oh, no, I think you can argue  
4 she's not here. I'm not going to give them an  
5 instruction to that effect, but --

6 MR. FALKNER: Please note my objection.

7 THE COURT: Okay. Your objection is  
8 definitely in the record.

9 All right. Any other issues with respect to  
10 the jury instructions?

11 MS. KRASINSKI: Not on behalf of the  
12 government, your Honor.

13 THE COURT: Okay. Thus far I'm intending to  
14 keep the unanimity instruction in there, which is page  
15 19, starts on the bottom there, for all the reasons that  
16 I've already said.

17 MR. FALKNER: Your Honor, my -- my only issue  
18 with regard to the jury instructions is -- are the ones  
19 that we've already discussed this morning --

20 THE COURT: Okay.

21 MR. FALKNER: -- and the special verdict.

22 THE COURT: Okay. All right. And the  
23 government, any others?

24 MS. KRASINSKI: No, your Honor.

25 As a matter of practice, does the Court tend

1 to instruct the jury before closing arguments?

2 THE COURT: Yes, I'll do them before. And  
3 who's doing the closing?

4 MS. KRASINSKI: I am, your Honor.

5 THE COURT: Okay. All right.

6 Let's talk about any other outstanding issues.  
7 Obviously this Petrozziello issue, I need to make a  
8 finding at the close of the case. So I will make sure  
9 that I do that. If counsel could approach, I can put  
10 that on the record at the time.

11 Any other issues?

12 MR. FALKNER: I don't think so, your Honor.

13 MS. KRASINSKI: No, your Honor.

14 THE COURT: All right. So we're here a little  
15 early, but I -- I just wanted to anticipate.

16 Let's see. All right. So we'll have to take  
17 a break or allow for the coconspirator finding to be  
18 made outside the presence of the jury. I'm trying to  
19 think of any other issues.

20 All right. Well, we've got until obviously  
21 nine o'clock till the jury gets here if something else  
22 comes up.

23 I think with respect to the forfeiture, if the  
24 jury convicts, ultimately it is the defendant's election  
25 with respect to that issue and so that's something that

1 you will have to let me know. And I believe you have to  
2 make that election at the close of the case.

3 MR. FALKNER: I believe -- I think it's --

4 THE COURT: Before deliberations, I think is  
5 the rule --

6 MR. FALKNER: (Nods head.)

7 THE COURT: -- so I just remind you of that.

8 MR. FALKNER: And, your Honor, I would request  
9 that the jury make that. But that --

10 THE COURT: Okay.

11 MR. FALKNER: -- that does raise one other  
12 issue.

13 THE COURT: Yeah.

14 MR. FALKNER: With regard to the forfeiture,  
15 given that there is no evidence in the case that his  
16 possession of the rifle or that his possession of the  
17 ammunition was unlawful and that those items had no  
18 connection whatsoever to interstate commerce, I -- I  
19 don't believe that those can be involved in the offense  
20 and, therefore, subject to forfeiture and I believe that  
21 the forfeiture would only apply to the items for which  
22 there's some evidence of interstate commerce.

23 THE COURT: Go ahead.

24 MS. KRASINSKI: Your Honor, I think as it  
25 relates to the ammunition, that's not accurate. It's

1 specifically noticed in the criminal forfeiture  
2 allegation.

3 I do think, candidly, that given the way that  
4 we struck the rifle from the indictment and the way that  
5 the forfeiture allegation is drafted, it references the  
6 firearms involved in the commission of the offense  
7 listed above in Count One.

8 So looking at it now, probably the rifle must  
9 be taken out of the forfeiture instructions and verdict  
10 form, but in terms of the ammunition, given that it is  
11 specifically alleged, I think it should be included. I  
12 don't think there's a requirement that we have elicited  
13 testimony that it have traveled in interstate commerce.

14 THE COURT: And I think, too, the question on  
15 forfeiture is slightly different and it's not whether he  
16 knowingly possessed the ammunition, but whether the  
17 ammunition was involved in or used in the offense of  
18 possessing the firearms.

19 So we will redraft the forfeiture instruction  
20 to remove the rifle. Is that correct, it's the rifle?

21 MS. KRASINSKI: Yes, your Honor.

22 THE COURT: The AR rifle.

23 MS. KRASINSKI: Yes, your Honor.

24 THE COURT: Okay. And, otherwise, at this  
25 point, unless you can give me some case law, I'm going

1 to keep the ammunition in the forfeiture instruction.

2 MR. FALKNER: Please note my objection and I  
3 will do what I can to find some case law.

4 THE COURT: Okay. All right.

5 MR. FALKNER: I -- while we have the time,  
6 I'd just simply reiterate my objection to the testimony  
7 of the expert. And now that the jury's not in the room,  
8 I -- I'd simply point out that I think the  
9 cross-examination testimony was clear, particularly at  
10 the end.

11 He specifically admitted that the only basis  
12 for his opinion that the pistol had traveled in  
13 interstate commerce was his reading the emails that said  
14 that it had traveled in interstate commerce and his  
15 reading the records and that there was no other basis  
16 for it; that he didn't -- that there -- that he didn't  
17 do anything other than simply repeat that. And that's  
18 what the case law provides.

19 And I think if your Honor reviews the  
20 transcript of the last few questions of the closing  
21 argument, Agent Forte specifically says that there was  
22 no other basis other than reading those documents and  
23 repeating them for the jury. And that's exactly what's  
24 prohibited.

25 THE COURT: I -- again, I've ruled on that

1 issue. I'm happy to talk about it further now, but  
2 the -- again, I need to read the cases, but my  
3 understanding of expert testimony and Rule 703 is that  
4 experts are permitted to rely on hearsay. They can't  
5 come into court -- it becomes a problem if they start to  
6 repeat hearsay statements.

7 And so the issue can become whether or not  
8 that's permitted and whether or not that has happened.  
9 And the Court needs to obviously listen to the evidence  
10 with care.

11 And here what happened was the expert  
12 testified that he relied on documents, he relied on  
13 hearsay, but I'm not clear exactly on why his testimony  
14 was objectionable.

15 I -- I understand that you -- you took a line  
16 from the *Cormier* case about hearsay, but I think that  
17 the case law and my understanding of Rule 703 is fairly  
18 clear that this is proper; that experts can rely on  
19 hearsay.

20 But, again, he studied the gun, the pistol.  
21 He studied it as an expert. He then looked and ran the  
22 gun through the tracing ATF online -- the ATF database  
23 and he talked and testified about how that was created  
24 and that experts such as himself rely on that database  
25 to form these conclusions.

1           And my -- I don't remember him injecting the  
2       hearsay into -- in front of the jury. He did talk about  
3       relying on it and he talked about the fact that the  
4       database led him to conclude that the gun had, indeed,  
5       traveled in interstate commerce. So -- and based on his  
6       experience, expertise, he made the conclusion that this  
7       gun traveled in interstate commerce.

8           And I -- the case law seems to suggest that  
9       his reliance on the manufacturer's corroborative hearsay  
10      and his reliance on the ATF database are fine.

11           So that -- that was my ruling at sidebar.  
12      That is my understanding of how Rule 703 works. So ...

13           MR. FALKNER: Could I just respond, your  
14      Honor?

15           THE COURT: Of course. You're standing up and  
16      I'm looking at you and I'm waiting for your response.

17           MR. FALKNER: Okay. So *Luna*, I think, is the  
18      seminal case on the -- on this issue. And in *Luna*, what  
19      happens is the special agent testifies that he had been  
20      certified as an interstate nexus expert and he examined  
21      the markings on the shell casings and the markings on  
22      the shell casings demonstrated that it was manufactured  
23      by Remington Peters, which only manufactured ammunition  
24      in Connecticut and Arkansas. And that, in combination  
25      with his review of consultation with the database and an



1 employee of the ammunition manufacturer, was what led  
2 him to his opinion.

3           The difference here is, yes, the agent looked  
4 at the gun. He looked at the markings on the gun. But  
5 those markings on the gun told him only that the gun was  
6 manufactured here in New Hampshire where the weapon was  
7 seized. He testified that that didn't contribute to his  
8 opinion that the gun had traveled in interstate  
9 commerce.

10           So, yes, he did look at that, at the gun, but  
11 the markings on the gun didn't do anything to tell him  
12 that the gun had traveled in interstate commerce.

13           THE COURT: Right, but it's part of his  
14 ultimate conclusions. He starts with the gun, studies  
15 the gun, and he knows from that that there's a  
16 manufacturer in New Hampshire. So now he needs to call  
17 the manufacturer and he needs to run the gun through the  
18 trace records.

19           So all -- that's the beginning of his  
20 conclusion.

21           MR. FALKNER: What I would suggest, though,  
22 your Honor, is that in *Luna*, that, therefore, calls for  
23 an expert opinion. An expert opinion has to be one  
24 which would assist the jury.

25           And so where the expertise comes into play in

1 a case like *Luna* is as a firearms expert, he has some  
2 knowledge that the factories are out of state. So he's  
3 got knowledge now that he's adding to his review of  
4 these databases. He's got knowledge as an expert in the  
5 field that this company that manufacturers it has  
6 factories in these locations. That's specialized  
7 knowledge that the jury doesn't necessarily have.

8 This expert, nothing about his opinion that  
9 the gun had traveled in interstate commerce was based on  
10 specialized knowledge which the jury didn't have. He  
11 simply looked at records and repeated them.

12 And it specifically -- if this statement  
13 doesn't mean -- if it's to mean anything, it would have  
14 to apply in this case.

15 And this is directly from *Luna*:

16 An expert may rely on these sources, but the  
17 entirety of his or her testimony cannot be the mere  
18 repetition of the out-of-state -- out-of-court  
19 statements of others.

20 And in terms of his opinion that this gun  
21 traveled in out -- in interstate commerce, he testified,  
22 I would suggest candidly, at the end of his  
23 cross-examination that that was all he was doing; he was  
24 simply repeating it. And he candidly acknowledged that  
25 none of his expertise added to that; that he was simply

1 repeating what he had found in those sources to the  
2 jury.

3           So if he had -- if an expert relies on things  
4 that are not admissible before the jury and does  
5 something with that through some kind of reliable  
6 process, that's one thing. But that's not what happened  
7 here. He simply read it and told the jury, I read these  
8 sources and that's what these sources said.

9           THE COURT: Well, that's similar to *Luna*  
10 because the Special Agent Kelsch in *Luna* looked at the  
11 markings, but then reached his conclusion based on  
12 studying the ATF database and the -- speaking with a  
13 manufacturer of the ammunition.

14           So it's quite similar to the situation here.  
15 He is reaching his conclusions based on this hearsay  
16 database, as you would describe it.

17           So it's not as though in *Luna* the special  
18 agent looked at the ammunition and had some unique  
19 knowledge about that. He was -- he was actually able to  
20 form his conclusion by looking at the ATF database.

21           MR. FALKNER: But he knew where the factories  
22 were and he knew that they were out of state. And  
23 that's what he added to the database records. He had  
24 something that he knew that he added. What this agent  
25 never had was any unique information that was known to

1 him. He simply repeated the sources.

2 THE COURT: Well, how is that different? You  
3 didn't object to the other gun and on the other gun  
4 there were markings that said China, I believe, and  
5 there were other markings. But that's hearsay. Those  
6 are words. They're introduced for the truth. He's  
7 looking at markings on guns. And --

8 MR. FALKNER: The markings -- but the markings  
9 on the gun, first of all --

10 THE COURT: If the issue is hearsay, what's  
11 the difference?

12 MR. FALKNER: But the markings on the gun  
13 are -- are both -- were made at the time. They're  
14 admissible records. And not only are they admissible,  
15 they've been admitted in this case. The photographs of  
16 the gun and the serial numbers on the gun and the guns  
17 themselves are all in evidence here.

18 So as to the shotgun, he's got a shotgun  
19 that says on the shotgun itself at the time it was  
20 manufactured, this gun was manufactured in China. And  
21 the expert testifies as to how those markings come to  
22 be, which demonstrates that those are -- to the extent  
23 that it's an out-of-court statement, that's an  
24 admissible out-of-court statement. The gun itself is  
25 manufactured with this evidence. That's evidence that's

1 seized by the FBI at the time that it takes the gun.

2 I don't have any objection to the fact that  
3 the markings on the gun are going before the jury.  
4 That's relevant, admissible evidence.

5 But here, what we don't have, the government  
6 hasn't produced and hasn't sought to introduce a single  
7 record. And all he's doing -- he's not even testifying  
8 that he reviewed business records from -- from the  
9 manufacturer. He's saying, I contacted the manufacturer  
10 and the manufacturer told me they looked at their  
11 records and their records said that it was -- that it  
12 had been shipped in interstate commerce. So he's  
13 repeating thirdhand hearsay and then he's saying, and I  
14 looked at our documents -- our records and our records  
15 say that it was shipped in interstate commerce.

16 Whether those records would be admissible or  
17 not, the government hasn't produced them, hasn't sought  
18 to introduce them, hasn't even put them before your  
19 Honor in any way. And those records, whether they're  
20 admissible or not, his repeating of those records is  
21 repeating hearsay. And -- and it -- it's the repetition  
22 of hearsay that's the problem. It's not -- it's not his  
23 examination of the firearm that's the problem.

24 And vis-a-vis the shotgun -- his examination  
25 of the firearm alone, he recognizes the manufacturer as

1 an expert in the field, he's exposed to where these  
2 companies manufacture their weapons, and he knows if  
3 that weapon was manufactured in China, it's traveled in  
4 interstate commerce. The only way it could get to  
5 New Hampshire is being imported from China.

6 The handgun is in a very different position.  
7 It has been manufactured in New Hampshire and that's all  
8 he can tell from his examination of the gun.

9 So now what he has to opine isn't that it  
10 came into New Hampshire, but that it was sent out of  
11 New Hampshire first and then it came back. And the only  
12 way that he can do that is simply repeating what he's  
13 learned from hearsay.

14 THE COURT: All right. I just -- I'm going to  
15 overrule your objection. And my understanding from *Luna*  
16 is that *Luna* held -- and I'm going to quote from *Luna*  
17 that the expert testimony was admissible because "his  
18 testimony was, thus, not simply a summary of  
19 out-of-court sources, but a thorough opinion drawing on  
20 multiple sources to ensure accuracy."

21 That's *Luna*, 649 F.3d at 105.

22 Here I believe the expert did something  
23 similar and I overrule the objection.

24 I certainly would have entertained a motion, a  
25 further motion, to reconsider my ruling had you filed

1 that motion last night, but I ruled at sidebar and I  
2 haven't really heard anything from you that persuades me  
3 that that ruling was incorrect, so I'm going to overrule  
4 it.

5 We've got 20 minutes. Anything else?  
6 Anything else?

7 MR. FALKNER: I -- I just want to make sure.

8 Did your Honor consider my arguments made as  
9 an oral motion to reconsider your ruling? I understand  
10 that you've --

11 THE COURT: I'm sorry. What are you asking  
12 me?

13 MR. FALKNER: I'm asking if your Honor would  
14 consider the arguments that I made here today to be an  
15 oral --

16 THE COURT: I'm absolutely considering them  
17 and I just ruled on them again. I'm saying that it  
18 would have been helpful, I think, to the Court to  
19 receive a motion with cases cited so that the Court  
20 could entertain your motion to reconsider on a more  
21 thoughtful basis. I would have read cases, I would have  
22 reconsidered.

23 But you're alerting me now to the fact that  
24 you want me to reconsider it. I am. I'm denying it. I  
25 am wishing that it were more fully briefed by both

1 counsel in the case ahead of this trial so that I don't  
2 have to make an on-the-fly ruling at sidebar and I  
3 wasn't anticipating that you would move to reconsider.

4 I'm entertaining it. I don't need to have a  
5 written motion. I'm simply saying that that would have  
6 been helpful to the Court had I understood ahead of time  
7 that you might move to reconsider my sidebar ruling, I  
8 would have been more prepared for that.

9 But having not received that and having only  
10 heard your oral motion, I am ruling and denying it,  
11 overruling the objection. I just haven't heard anything  
12 that persuades me that my sidebar ruling was incorrect.

13 MR. FALKNER: I -- I understand and I -- I do  
14 apologize, but I -- I just wanted to make sure that it  
15 was being reconsidered and --

16 THE COURT: You have no -- you can make oral  
17 arguments anytime. That is your right. I'm just saying  
18 if you file briefing on it, you get an even more solid  
19 ruling from the Court.

20 So anything further? We've got 20 minutes to  
21 get ready for the last witness in the case and then any  
22 evidence Mr. Falkner puts on, any rebuttal thereafter,  
23 and then closing arguments and jury instructions.

24 Anything we need to discuss?

25 MS. KRASINSKI: Not on behalf of the



1 government, your Honor.

2 MR. FALKNER: No, your Honor.

3 THE COURT: All right. Then we'll see you in  
4 20 minutes sharp.

5 (Recess taken from 8:41 a.m. until 9:05 a.m.)

6 THE COURT: We're just going to confirm  
7 everybody's here in terms of the jury.

8 So while we're doing that, I think someone  
9 asked which order I do jury instructions and I may have  
10 misspoken. I give jury instructions last. Okay? I may  
11 have misspoken when you asked before. So closings, and  
12 then I'll give the jury instructions.

13 Okay. Mr. Falkner, did you request -- I'm  
14 going back just for a second to the expert issue.

15 Did you request any records, underlying  
16 records, from the government about his -- his expert  
17 testimony? Did you make any requests for those  
18 documents?

19 MR. FALKNER: May I have a moment, your Honor?

20 THE COURT: Yeah.

21 MR. FALKNER: The request, your Honor, was for  
22 a written summary describing the witnesses' opinions,  
23 the basis -- the bases and reasons for those opinions,  
24 and the witnesses' qualifications of any testimony that  
25 the government intends to use under Rule 702, 703, or

1 705 of the Federal Rules of Evidence during its case in  
2 chief at trial. See Fed. R. Crim. P. 16(a)(1)(F), local  
3 criminal Rule 16.1(e)(1) -- oh, I'm sorry -- (a)(1)(G),  
4 see Fed. R. Crim. P. 16 (a)(1)(G), local criminal Rule  
5 16.1(e)(1) and (e)(3).

6 THE COURT: All right. So you made those  
7 requests via a letter --

8 MR. FALKNER: Correct.

9 THE COURT: -- to the government? And you  
10 didn't receive anything from the government about the  
11 expert witness?

12 MR. FALKNER: I received -- I did receive a  
13 two-page summary.

14 THE COURT: Okay. And when you received the  
15 two-page summary, did you make any subsequent requests  
16 of the government?

17 MR. FALKNER: No, your Honor.

18 THE COURT: And you didn't file any sort of  
19 motion to compel or motion for discovery with respect to  
20 that?

21 MR. FALKNER: No.

22 THE COURT: Okay. All right.

23 MS. KRASINSKI: Your Honor, can I proffer that  
24 counsel and I discussed yesterday that I said to counsel  
25 if you had requested any of this, I would have gotten it

1 to you earlier. And counsel responded, I didn't request  
2 it earlier because I didn't want you to know it was an  
3 issue. I didn't want to -- you to obtain the business  
4 records.

5 THE COURT: Okay. All right.

6 Because I -- just in the time that I've had to  
7 look at some of the cases more closely, the line that  
8 you take from *Luna* on which you're relying cites a  
9 Seventh Circuit case, which I just read, *U.S. v. Smith*.

10 That case is all about the confrontation  
11 clause and I think had you made some effort to obtain  
12 the documents and had you presented it in -- had you  
13 presented that argument in that fashion, then I think  
14 there may be a reason to take a break to further  
15 consider this issue, but I'm fairly confident that this  
16 *U.S. v. Smith* case and the confrontation clause issue is  
17 not a concern, based on everything I've heard.

18 And I have read *Cormier* and *Luna* more  
19 carefully and I think this is just one of those,  
20 frankly, issues that if, in fact, the First Circuit is  
21 going to allow nexus testimony in a different fashion,  
22 the First Circuit's going to have to tell us.

23 But I think based on the testimony of the  
24 agent here that he -- his testimony's admissible under  
25 *Luna* and *Cormier* and *Corey* and I did look at the Seventh

1 Circuit case and I think there are no problems based on  
2 everything I've heard with respect to that.

3 I'm revisiting that only because I was a  
4 little concerned because you raised, I think, in your  
5 recitation this morning the issue of you not getting  
6 records and not receiving records from the government  
7 with respect to that hearsay testimony.

8 MR. FALKNER: I -- I'd point out, your Honor,  
9 I am not suggesting there was a discovery violation. I  
10 did not -- if anything I argued meant to imply --  
11 implied that there was a discovery violation, that's not  
12 at all what I'm arguing. What I'm arguing is that those  
13 records aren't before the Court as part of the  
14 evidentiary record is all I was suggesting.

15 THE COURT: Okay. Well, in an abundance of  
16 caution, I was concerned, based on *U.S. v. Smith* and  
17 based on the line from *Luna* that caused you to assert  
18 this argument and the case that the First Circuit is  
19 citing raises issues of confrontation. So just wanted  
20 to put that on the record.

21 All right. So now we're going to hear, I  
22 think, from Mr. Roya. And is his counsel here today as  
23 well?

24 MS. KRASINSKI: Yes, your Honor.

25 He is. Okay. All right.

1           And we will take a break before -- well, let's  
2     take a break before closings so I can make any findings  
3     and make rulings out of the presence of the jury. So  
4     we'll take a break at the close of all the evidence in  
5     the case before closings. All right?

6           Okay. All right. Is the jury ready?

7           THE CLERK: I'm just getting them lined up.

8           THE COURT: Okay. All right.

9           Have we read all the stipulations to the jury  
10    as well?

11          MS. KRASINSKI: Yes, your Honor.

12          THE COURT: Okay.

13          THE CLERK: All rise for the jury.

14                 (Jury entered the courtroom.)

15          THE CLERK: Please be seated.

16          THE COURT: All right. Good morning.

17          Has the jury followed all my instructions thus  
18    far?

19          All right. Good. Thank you.

20          We are now going to continue day three of our  
21    trial and the government may call its next witness.

22          MS. KRASINSKI: United States calls Gerald  
23    Roya.

24          THE CLERK: Mr. Roya, you can come up toward  
25    the witness stand and remain standing and raise your

1 right hand.

2 **GERALD ROYA**, having been first duly sworn,  
3 testified as follows:

4 THE CLERK: Thank you. Please state your full  
5 name, spell your last name for the record.

6 THE WITNESS: Gerald E. Roy, G-e-r-a-l-d,  
7 middle initial, E, R-o-y-a.

8 THE CLERK: Thank you very much. Please be  
9 seated.

10 DIRECT EXAMINATION

11 BY MS. KRASINSKI:

12 Q. Good morning, Mr. Roy.

13 A. Good morning.

14 Q. Mr. Roy, where do you work?

15 A. Victory Trading.

16 Q. And where do you live?

17 A. I live in Exeter.

18 Q. New Hampshire?

19 A. Yup.

20 Q. Do you know the defendant, Johnathon Irish?

21 A. Yes.

22 Q. How do you know him?

23 A. I've known him since high school, basically.

24 I had a crush on his sister and that's how I met him.

25 Q. And did you baby-sit him ever?

1 A. Once or twice, yeah.

2 Q. Is it fair to say that you knew him as a boy,  
3 but you lost touch?

4 A. (Nods head.) Over the years, yeah.

5 Q. At some point did you guys get back in touch?

6 A. We -- we did, yes.

7 Q. Okay. And when was that?

8 A. We -- we saw each other at the campground and  
9 we saw -- we went out, played pool once, and he met me  
10 at my work once.

11 Q. What campground are you referring to?

12 A. I don't remember the name of it.

13 Q. Do you recall where it was?

14 A. It's over in Epsom.

15 Q. Do you also know the defendant's mother?

16 A. Yes.

17 Q. What's her name?

18 A. Nancy.

19 Q. And is she married?

20 A. Yes.

21 Q. What's her husband's name?

22 A. Les.

23 Q. And have you communicated with the defendant  
24 by phone?

25 A. I have.

1 Q. And what about with Nancy?

2 A. Yes.

3 Q. Now, I want to turn your attention to November  
4 of 2019. At some point in November of 2019, did you  
5 arrange to take custody of some firearms?

6 A. Yes.

7 Q. Can you tell us how that happened?

8 A. Basically, Johnathon was having a hard time  
9 with his girlfriend and I was asked and/or, I don't  
10 remember, I reached out to Johnathon to find out what  
11 was going on because he was having such a hard time.  
12 And basically there was -- there was this big blowout  
13 between him and his girlfriend and that -- that's how we  
14 got in touch.

15 And at some point he asked me to borrow money  
16 or could I get him money. And I said, yes, I can get  
17 you \$300.

18 We met at my work, I gave him the \$300. He  
19 asked me if I wanted collateral or anything like that.  
20 And he basically said he could give the guns or a dirt  
21 bike or a four-wheeler. It just happened to be the  
22 guns, so ...

23 Q. So I just want to break it down.

24 You or Johnathon, one of you, reached out to  
25 the other --



1 A. Yeah.

2 Q. -- and that was because he was having  
3 relationship problems?

4 A. Yes.

5 Q. And he asked you for some money?

6 A. Yes.

7 Q. And did you agree to lend him \$300?

8 A. Yes, I did.

9 Q. And so as part of that, if I understand you  
10 correctly, he said, I can give you something as  
11 collateral?

12 A. Yup.

13 Q. And so, if I understood you correctly, you  
14 agreed that his guns would be the collateral?

15 A. Yup.

16 Q. And did you talk about the firearms other than  
17 just --

18 A. A little bit. I mean, very, very briefly.

19 Q. Can you describe that brief interaction?

20 A. He -- he basically said, well, why don't you  
21 take the guns; I can't have them anyway.

22 Q. Now, the day that you had this conversation,  
23 where were you?

24 A. I was at work.

25 Q. And where was the defendant?

1           A.     He had come to pick up the money.

2           Q.     And did he have the guns with him at that  
3 point?

4           A.     Not to my knowledge.

5           Q.     When did you, in relation to when you had this  
6 conversation, take custody of the guns?

7           A.     It was like a week to two weeks later.

8           Q.     And how did you arrange to get the guns?

9           A.     Basically, as far as I understood, Johnathon  
10 had no control over -- over the guns. I had to go  
11 through Nancy. She had to contact the person that had  
12 the guns and then I had to meet him.

13          Q.     Okay. So you had to talk to Johnathon's mom?

14          A.     Yup.

15          Q.     And she would tell you, it was your  
16 understanding, who to get the guns from?

17          A.     Correct.

18          Q.     So did she provide you with information as to  
19 who you should get the guns from?

20          A.     She gave me a contact number and I tried  
21 contacting. We were able to just text back and forth  
22 for the most part. It -- I guess he couldn't show up,  
23 so he had Neil show up and --

24          Q.     When you say he couldn't show up, who do you  
25 mean?

1           A.     It said to contact Roscoe and -- but I -- the  
2 person I was pretty much texting was Neil.

3           Q.     So you communicated -- to arrange to pick up  
4 these guns --

5           A.     Yeah.

6           Q.     -- you communicated with the defendant's mom,  
7 Nancy?

8           A.     (Nods head.)

9           Q.     Yes?

10          A.     Yes.

11          Q.     Sorry. It needs to be verbal for the court  
12 reporter.

13          A.     Yeah.

14          Q.     And you communicated with a guy named Neil?

15          A.     Correct.

16          Q.     Had you ever met Neil before?

17          A.     Not to my knowledge.

18          Q.     All right. Had you ever talked to him before?

19          A.     Not to my knowledge.

20          Q.     So did you make arrangements with Neil to pick  
21 up the guns?

22          A.     Eventually we did get together. It was on a  
23 Sunday morning.

24          Q.     And where did you do that at?

25          A.     Epsom traffic circle McDonald's.

1 Q. And can you describe that for us?

2 A. Showed up roughly -- I don't remember if it  
3 was 9:30 or ten o'clock exactly or so to speak. I think  
4 it was like five minutes late. I pulled in, he pulled  
5 in, grabbed a big case, that one --

6 Q. Now, when you say that one, you're pointing at  
7 this large box that --

8 A. Yes.

9 Q. And that, for the record, is Government's  
10 Exhibit 33.

11 So you grabbed this box, Government's  
12 Exhibit 33?

13 A. Yup.

14 Q. And what happened?

15 A. Brought it over to the back of my truck, put  
16 it in the back of my truck, said here you go, here's the  
17 key. I said okay. He said he couldn't stay very long;  
18 he was still sick or whatever.

19 And so I quickly opened up the box, just made  
20 sure that the guns were there, and closed it back up,  
21 closed -- closed it into my truck and that was it.

22 Q. Now, when you opened it to check and make sure  
23 the guns were there, were there guns in the box?

24 A. Yes, there were.

25 Q. So what did you do next?

1           A.     Went home. Well, sorry. I did not go home.  
2     I went to my sister-in-law's -- Sunday, me and my  
3     brother-in-law, we get together, go out for a while.

4                 I didn't -- I left the guns, case, everything,  
5     at my sister's. And then we went out, we didn't get  
6     back until about 8:00, 8:30 at night. Then I just  
7     transferred it back into my truck.

8           Q.     And after you put it back in your truck, what  
9     did you do with it?

10          A.     I went home. As soon as we got home,  
11     basically went and did an inventory of the box.

12          Q.     And when you inventoried the box, what'd you  
13     find?

14          A.     Found the 1911, what I assumed at the time was  
15     an AR-15, found a shotgun, BB gun, respirator, like a  
16     chem suit, flap (sic) jacket, a very small-type gun  
17     cleaning kit.

18          Q.     Now, you mentioned a shotgun.

19          A.     Yup.

20          Q.     How many pieces was that shotgun in?

21          A.     Two.

22          Q.     And at some point -- actually, let me back up.  
23                 You open the box, you check out the contents.  
24     Then what do you do?

25          A.     I made a -- I made a listing and took pictures

1 of everything that was in the box, so to speak; all  
2 different magazines, all the weapons, the serial  
3 numbers, the rough number of ammunition, the -- pretty  
4 much all that.

5 Q. Why'd you do that?

6 A. My parents actually wanted me to do that  
7 because they wanted to know what was in the house and  
8 what -- what wasn't. So ...

9 Q. So you make this inventory. And then what?

10 A. Locked the box back up and brought it up the  
11 three flights of stairs to my room, basically.

12 Q. Now, at some point after you took this case  
13 with guns in it from Neil, did the FBI show up at your  
14 house?

15 A. Yup.

16 Q. About how long after you took this box from  
17 Neil did the FBI show up at your house?

18 A. I want to say it was two to nine days. I  
19 don't remember exactly, but ...

20 Q. You didn't have them for very long?

21 A. No.

22 Q. And when they showed up, did you provide them  
23 with the firearms?

24 A. As far as when the FBI showed up?

25 Q. Yes.

1 A. Yes.

2 Q. And did you also allow them, in the course of  
3 your contacts with them, to photograph communications in  
4 your cell phone?

5 A. Yes.

6 Q. Before we look at those communications from  
7 your cell phone, I want to ask you a few other questions  
8 about those guns.

9 After you took possession of the case and  
10 those guns, did the defendant ever talk to you about  
11 those guns again?

12 A. Yes.

13 Q. Can you describe that to us?

14 A. At one -- one point in time he asked to get  
15 one gun back because someone had -- I don't believe this  
16 to be true, but somebody had threatened him. So ...

17 Q. So he said, someone threatened me, I want one  
18 of my guns back?

19 A. Pretty much.

20 Q. Which gun did he want back?

21 A. I -- we didn't get into which gun, so I  
22 couldn't tell you.

23 Q. What did you say?

24 A. When we made -- when we made the initial  
25 agreement, since he's not supposed to have guns, I told

1 him, okay, then you will not be getting these back.

2 Q. So he asked for them back and you said no.

3 A. Correct.

4 Q. Did you also communicate with the defendant's  
5 mother after you took custody of that case and those  
6 firearms?

7 A. I believe we talked a couple times, yeah.

8 Q. And did she send you a form to sign regarding  
9 the firearms?

10 A. Yup.

11 Q. How did that come about?

12 A. Basically, she said that she was going to send  
13 me a form to transfer the weapons into my care.

14 I got a text message of a picture of a  
15 piece of paper stating that the weapon -- transfer of  
16 weapons and had the serial numbers on it. And that's  
17 mainly what I looked at, his name. And then I signed,  
18 had to recopy, rephoto it, whatever, email it back.

19 MS. KRASINSKI: May I approach, your Honor?

20 THE COURT: Yes.

21 Q. I'm handing you what's been marked for  
22 identification purposes as Government's Exhibit 29A.  
23 Are those some of the photographs from your phone that  
24 the FBI took?

25 A. Looks like it, yeah.



1 Q. And what are those?

2 A. It's Johnathon's phone number and Nancy and  
3 Les's phone number.

4 Q. And Johnathon's phone number, do you mean  
5 Johnathon Irish?

6 A. Yeah.

7 Q. And who do you mean by Nancy and Les?

8 A. Nancy and Les Haskell.

9 Q. And is that the defendant's mother?

10 A. Yup.

11 Q. And her husband?

12 A. Yes. Now, yes.

13 Q. And that's how it was in your phone?

14 A. Yup.

15 MS. KRASINSKI: Your Honor, I move to strike  
16 the ID on Government's Exhibit A.

17 THE COURT: That's exhibit --

18 MS. KRASINSKI: 29A. Excuse me.

19 THE COURT: 29A. Okay. Do you have an extra  
20 copy of that? For some reason I --

21 MS. KRASINSKI: I do, your Honor.

22 THE COURT: Thank you.

23 Any objection?

24 MR. FALKNER: No, your Honor.

25 THE COURT: All right. Full exhibit, 29A.

1 (Government's Exhibit 29A admitted.)

2 MS. KRASINSKI: Permission to publish, your  
3 Honor?

4 THE COURT: Yes.

5 Q. Let's just briefly look at those.

6 Again, just now that the jury has a chance to  
7 see it, that's the defendant, Johnathon Irish's, phone  
8 number in your phone?

9 A. One of them, yeah.

10 Q. And if we go to the next page of this exhibit,  
11 whose number is that?

12 A. Nancy and Les.

13 Q. And that's the defendant's mother?

14 A. Yup.

15 Q. I'm handing you now what's been marked for  
16 identification purposes as Government's Exhibit 29B.  
17 Are those also photographs of screenshots from your  
18 phone?

19 A. Yup.

20 Q. And is it fair to say that this is ingoing and  
21 outgoing calls?

22 A. Appears to be, yeah.

23 MS. KRASINSKI: Move to strike the ID on  
24 Government's Exhibit 29B.

25 THE COURT: Any objection, Attorney Falkner?

1 MR. FALKNER: No, your Honor.

2 THE COURT: All right. 29B is a full exhibit.  
3 (Government's Exhibit 29B admitted.)

4 MS. KRASINSKI: Permission to publish, your  
5 Honor?

6 THE COURT: Yes.

7 Q. Now, if you look at the first page of  
8 Government's Exhibit 29B, do you see a call on  
9 November 1st, 2019?

10 A. Yup.

11 Q. And is that from the defendant, Johnathon  
12 Irish?

13 A. Yes.

14 Q. Do you recall, approximately, the date that he  
15 first asked you to lend him \$300?

16 A. I do not recall the exact date.

17 Q. Would it have been around this time frame?

18 A. Within probably a week of that, yeah.

19 Q. I'm handing you now what's been marked for  
20 identification purposes as Government's Exhibit 29C.

21 Are those screenshots of text messages from  
22 your phone?

23 A. Yes.

24 Q. And who are those text messages with?

25 A. To me from Johnathon.

1 Q. And are there also some from Johnathon to you?

2 A. The -- as in Johnathon made the -- made these,  
3 yes.

4 Q. So just to be clear, these are your  
5 communications with the defendant?

6 A. Yes.

7 MS. KRASINSKI: Your Honor, I move to strike  
8 the identification of Government's Exhibit 29C.

9 THE COURT: Any objection?

10 MR. FALKNER: No, your Honor.

11 THE COURT: All right. 29C is a full exhibit.  
12 (Government's Exhibit 29C admitted.)

13 MS. KRASINSKI: Permission to publish, your  
14 Honor?

15 THE COURT: Yes.

16 Q. Let's go through some of these.

17 A. Yup.

18 Q. What's the date of this first communication?

19 A. November 2nd.

20 Q. And was it 2019?

21 A. Yes.

22 Q. And is this -- can you read us the content of  
23 this text message, please?

24 A. "Gary, it's Johnathon, please call me."

25 Q. And if we move to the next page of this,

1 what's the date of this incoming message from the  
2 defendant?

3 A. November 9th.

4 Q. And what did he tell you in this message?

5 A. "Gary, please pick up, man."

6 Q. Let's turn to the next text message.

7 And what are the contents of that  
8 communication?

9 A. This was the day that Johnathon came to my  
10 work to pick up the money.

11 Q. And did he text you, "Dude, I have no fuel to  
12 get home or anything. You said you would still help. I  
13 counted on this"?

14 A. Yes.

15 Q. The date --

16 A. November 9th.

17 Q. -- on the bottom appears to be cut off, but  
18 can you tell what that date is?

19 A. November -- November 9th, 10:36.

20 Q. And what did you understand this to mean?

21 A. I -- from what I remember, I went to work, I  
22 told him to meet me at work. I was in the warehouse.  
23 We don't have the best reception inside the warehouse,  
24 so he called me. He couldn't get ahold of me until I  
25 got outside the warehouse. And then that's -- that's

1     when I got the text message, because he was -- I guess  
2     he was right around the corner and he used all of his  
3     fuel to get from where he was to my location to pick up  
4     the cash.

5           Q.     And then if we move on to the next  
6     communication, let's go through the communication. I  
7     think it's three pages long in this exhibit and then  
8     we'll talk about the date.

9           Is this a communication to you from the  
10    defendant?

11          A.     Yes.

12          Q.     Does it read: Gary, sorry for the early hour.  
13     Stephanie will be making contact with Roscoe, then  
14     presumably you, to verify location, how long you've had  
15     them, that you picked them up from Roscoe, et cetera,  
16     thank you?

17          A.     Yes.

18          Q.     What was the date of that message?

19          A.     November 24th, 6:27.

20          Q.     And had you taken that box by this point?

21          A.     I believe I had.

22          Q.     Did you pick up this box from Roscoe?

23          A.     To my knowledge, it was Neil.

24          Q.     So what did you understand this text to mean?

25          A.     Basically, it -- as far as I understood it,

1 Stephanie was trying to verify that someone else besides  
2 Johnathon had the guns and they were out of his reach.

3 MR. FALKNER: Objection; motion to strike.

4 THE COURT: Overruled.

5 Q. Now, if we turn to the next communication,  
6 your response, how -- what was your response to this?

7 A. Basically I was -- I was a little pissed off.

8 Q. Why?

9 A. As far as I'm concerned, nobody needs to know  
10 who has guns, who doesn't. There's too many thieves out  
11 there, too many break-ins that happen, too many guns go  
12 missing, you know.

13 Q. So you just didn't want people to generally  
14 know that there were guns in your house?

15 A. Correct.

16 Q. Let's look at the final communication from the  
17 defendant, beginning on page -- the page ending in Bates  
18 number 66.

19 And, again, is that a communication to you  
20 from the defendant?

21 A. Yes.

22 Q. And he says: I have not given any info. All  
23 that was said was she needs to talk to Roscoe. I have  
24 no idea if he was going to tell her or not is all.

25 A. Yeah.

1 Q. "Sorry, I'm out."

2 A. Yeah.

3 Q. And what was the date of that communication?

4 A. It says November 24th.

5 Q. Do you recall, at the point where you guys  
6 were communicating about this, had the FBI already  
7 seized the firearms or did you still have them?

8 A. I personally don't remember.

9 Q. I'm handing you now Government's Exhibit 29D.  
10 Are those images from communications from your  
11 phone?

12 A. Yup.

13 Q. And who are those communications with?

14 A. Nancy and Les.

15 Q. Do these communications relate to taking  
16 possession of the guns?

17 A. Yes.

18 MS. KRASINSKI: Your Honor, I move to strike  
19 the identification on Government's Exhibit 29D.

20 MR. FALKNER: Objection.

21 THE COURT: Conditionally admitted. So full  
22 exhibit, yes.

23 (Government's Exhibit 29D admitted.)

24 MS. KRASINSKI: Permission to publish, your  
25 Honor?



1 THE COURT: Yes.

2 Q. Now, this first communication, what's the date  
3 of this?

4 A. November 10th.

5 Q. And, again, this is all 2019?

6 A. Yes.

7 Q. And in this communication, the text message  
8 reads, need your address for bill of sale, please.

9 A. Yup.

10 Q. What did you understand that to mean?

11 A. That they were going to make a bill of sale  
12 for the weapons that I had.

13 Q. Who's they?

14 A. Nancy, mainly.

15 Q. And then, moving to the communication  
16 beginning at the document ending in Bates number 37,  
17 which I believe would be page 3 of the exhibit,  
18 what's -- what's this communication?

19 A. This is so that I could contact the person  
20 that I was supposed to get the guns from.

21 Q. So this is what you described earlier, Nancy  
22 sending you the contact information?

23 A. Yup.

24 Q. And then turning to the next communication  
25 from the defendant's mom, let's look at the page of the

1 exhibit beginning with or ending with Bates number 51.

2 And, Mr. Roy, if it's easier for you, it  
3 should be up on the screen in front of you.

4 A. Yup.

5 Q. Is this another communication from the  
6 defendant's mother?

7 A. Yes.

8 Q. And what's the date of this communication?

9 A. November 16th.

10 Q. And she asks: Did Neil meet up with you?

11 A. Correct.

12 Q. And what's this in relation to?

13 A. To pick up the box containing the weapons.

14 Q. And taking a look at the next text message on  
15 the next page, is that your response?

16 A. Yes.

17 Q. Had you met up with Neil yet?

18 A. No.

19 Q. So as of November 16th, 2019, you didn't have  
20 the case with the firearms yet?

21 A. Correct.

22 Q. Let's take a look at the communication from  
23 the defendant's mother that begins on the page ending in  
24 Bates number 57.

25 MR. FALKNER: Objection. May we be seen at

1 sidebar?

2 THE COURT: Yes.

3 AT SIDEBAR

4 MR. FALKNER: He specifically testified that  
5 these text messages and that this contact was Nancy and  
6 Les. And now she -- the -- that's what the witness  
7 testified to when she asked. She said, is that Nancy's  
8 phone number and he said, Nancy and Les. And he -- and  
9 she said, are these your communications with Nancy, and  
10 he said Nancy and Les.

11 So he didn't identify this communication as  
12 being with Nancy and so, therefore, I object to the  
13 question as phrased.

14 MS. KRASINSKI: I think he testified earlier  
15 that his communications with -- involving the firearms  
16 and the bill of sale were with Nancy, but I can  
17 certainly ask him if he understood this to be from Nancy  
18 rather than Les.

19 THE COURT: All right. Please do that and  
20 once that's done, if you need to approach again, go  
21 ahead.

22 Obviously I admit this provisionally on my  
23 findings outside of the presence of the jury and you  
24 understood that.

25 MR. FALKNER: Correct.

1 THE COURT: Okay.

2 CONCLUSION OF SIDEBAR

3 Q. I just want to clarify something.

4 Did you understand when you were texting that  
5 you were talking to the defendant's mother?

6 A. As far as?

7 Q. Rather than Les.

8 A. I assumed it was Nancy.

9 Q. So you understood that you were talking to  
10 Nancy?

11 A. (Nods head.)

12 Q. Is that a yes?

13 A. Yes.

14 Q. Thank you.

15 Now, looking back at this communication, so  
16 you understood this to be Nancy texting you:

17 Just talked to Johnathon; no need for you to  
18 come to court Wednesday; he wants to keep you in the  
19 background, LOL. At your convenience, please do that  
20 list, send me a picture of the list, and I will redo the  
21 letter. I have POA for Roscoe, so it's all legal.

22 First, what's the date of that communication?

23 A. November 17th.

24 Q. When -- when the communication says please  
25 send -- please do that list, what did you understand

1 that to mean?

2 A. A copy of the list that I had made of the box,  
3 what was in the box.

4 Q. And did you do that?

5 A. I actually forgot to send the copy of the  
6 list.

7 Q. And this communication says that "I will redo  
8 the letter."

9 What did you understand that to mean?

10 A. Because of the fact of from what I had  
11 understood, that it was only supposed to be the pistol  
12 and the rifle, but I got a whole lot more than I  
13 bargained for, so ...

14 Q. So I just want to break that down.

15 Your understanding was that you were supposed  
16 to be taking possession of a pistol and a rifle?

17 A. Correct.

18 Q. Where did that understanding come from?

19 A. That's what was, I believe, said to me between  
20 me and Johnathon.

21 Q. So if I'm understanding you correctly,  
22 Johnathon -- when you have this discussion with  
23 Johnathon about \$300 and the collateral --

24 A. Uh-huh.

25 Q. -- he says something like, you can take my

1 pistol and rifle as collateral?

2 A. Well, the -- those were the guns I believe he  
3 stated.

4 Q. And so you said you got a whole lot more than  
5 you bargained for.

6 A. Yeah.

7 Q. Were you expecting a big black case?

8 A. No, I was not.

9 Q. But the shotgun in two pieces, was it in the  
10 case?

11 A. It was in there, yes.

12 Q. Along with all of these other items?

13 A. Correct.

14 Q. So you got more than you bargained for.

15 So what was your discussion with Nancy  
16 relating to that?

17 A. It was basically said -- I said that there's  
18 just -- there's more than just the pistol and the rifle  
19 in here and there's a shotgun, there's this, there's  
20 this. And she said, okay, I -- send me a list; I will  
21 remake the bill of sale, so to speak.

22 Q. Now, I want to turn to the communication that  
23 begins on the page that ends in Bates number 69.

24 And what's this?

25 A. Huh?

1 Q. What is this?

2 A. That's the picture text that I got of the  
3 weapons transfer.

4 Q. And who'd you get this from?

5 A. Nancy and Les.

6 Q. And what were you supposed to do with that?

7 A. Print it, sign it, send it back.

8 Q. Now, if we move to the communication that  
9 begins at the page that ends in Bates number 75, who's  
10 that from?

11 A. From Nancy and Les.

12 Q. And what's the date of that?

13 A. November 25th.

14 Q. And it says: J is waiting for me to send it  
15 to him.

16 A. Yup.

17 Q. What did you understand that to mean?

18 A. Truthfully, I -- I don't remember the J part,  
19 but I -- I just thought he was waiting to see the signed  
20 bill of sale.

21 Q. And who is he?

22 A. I'm guessing J might be Roscoe's first name.  
23 I don't know. I -- I -- Johnathon, I -- I have no clue.

24 Q. So when you look at this, it could be  
25 Johnathon, it could be Roscoe; you don't know?

1 A. Yup.

2 Q. And if we turn to the next communication, that  
3 communication reads: Any clue when you are sending it;  
4 J is waiting.

5 A. I -- I was working a lot that week. I didn't  
6 have time to really go through much.

7 "Any clue when you're sending it?"

8 I didn't -- I believe I got to it roughly  
9 around 10:00-ish Monday night after work.

10 Q. Is it fair to say that you were asked a number  
11 of times to sign and send this document?

12 A. Two or three times, yeah.

13 Q. I just want to go back to Government's  
14 Exhibit 29B briefly. We're looking at the page that  
15 ends in Bates number 26.

16 Do you see calls with Nancy and Les?

17 A. Yes.

18 Q. Do you remember who you talked to?

19 A. I mostly talked to Nancy.

20 Q. And is that true for the call noted on the  
21 next page, ending in Bates number 27, dated  
22 November 25th -- or 15th, excuse me.

23 A. I believe so.

24 Q. And looking at the next page ending in Bates  
25 number 29, there is a November 17th, 2019, call with



1 Nancy and Les. Do you recall who you would have spoken  
2 to at that point?

3 A. At one point I was invited to go to a  
4 Thanksgiving dinner and that was by Les. I cannot say  
5 for sure exactly which call it was.

6 Q. In your voice communications and your calls  
7 regarding the guns and regarding the list, who did you  
8 talk to?

9 A. It was mainly Nancy.

10 Q. I'm handing you what's been marked for  
11 identification purposes as Government's Exhibit 29F. Is  
12 that the -- I guess the data associated with you  
13 receiving the document you were supposed to sign --

14 A. I believe so, yes.

15 Q. -- that you received from the contact titled  
16 Nancy Les?

17 MR. FALKNER: Objection; the same Petrozziello  
18 objection.

19 THE COURT: Overruled.

20 Q. You can go ahead and answer the question.

21 A. I believe so.

22 MS. KRASINSKI: Your Honor, I move to strike  
23 the ID from Government's Exhibit 29F.

24 MR. FALKNER: Objection.

25 THE COURT: Overruled.

1                   Go ahead. Full exhibit.

2                   (Government's Exhibit 29F admitted.)

3                   MS. KRASINSKI: Permission to publish, your  
4 Honor?

5                   THE COURT: Yes.

6                   Q. And we'll look at the document itself in a  
7 minute, but we'll just take a look at this first page of  
8 Government's Exhibit 29F.

9                   What was the date that you received the  
10 document you were supposed to sign?

11                  A. According to this, November 24th.

12                  Q. Now, I want to look at Government's  
13 Exhibit 30, which has previously been admitted.

14                  What's that?

15                  A. The transfer of weapons.

16                  Q. Is your signature on that document?

17                  A. Yes, it is.

18                  Q. Now, the date of that -- what's the date of  
19 that?

20                  A. That says October 20th, 2019.

21                  Q. Is that the date that you took custody of the  
22 guns?

23                  A. No, it is not.

24                  Q. Approximately what date did you take custody  
25 of these guns?

1           A.     I don't know. That's why I have my phone.  
2     I'm not great with dates.

3           Q.     If I showed you your communications with  
4     Neil --

5           A.     Yeah.

6           Q.     -- would that help you recall the date that  
7     you actually met up with Neil?

8           A.     Yes.

9           Q.     I'm showing you what's been marked for  
10    identification purposes as Government's Exhibit 29E.  
11    Can you take a look at that and then, once you're done,  
12    let me know.

13          A.     Okay.

14                 Okay. So it appears on November 17th.

15          Q.     Now, if we look back at the weapons identified  
16    in this transfer document, it includes a handgun, rifle,  
17    and magazine and ammunition, right?

18          A.     Uh-huh.

19          Q.     Does it include the shotgun?

20          A.     No, it does not.

21          Q.     Do you -- do you know have any idea why?

22          A.     I don't know why. From -- I can only  
23    speculate on that.

24          Q.     Okay. I'm not going to ask you to speculate.  
25    You don't know.

1           So the date is October 20th and I think you  
2       said that's not the date you got the guns, right?

3           A.     Correct.

4           Q.     The document -- if we go back to the entire  
5       document and focus on the top portion, is it fair to  
6       say that this indicates that you got them from Roscoe  
7       Whitney?

8           A.     Yes.

9           Q.     But did you get them from Roscoe Whitney?

10          A.     No.

11          Q.     So -- and you said the shotgun was in the box,  
12       but it's not on this transfer of weapons?

13          A.     Correct.

14          Q.     So why'd you sign this?

15          A.     Pretty much being an idiot, I guess. I...

16          Q.     Just a few more brief questions.

17                 Do you know Roscoe Whitney?

18          A.     Not to my knowledge.

19          Q.     Do you know anyone named David Marcotte?

20          A.     Not to my knowledge.

21          Q.     All right. Do you know anyone that -- other  
22       than meeting up with him in a parking lot, did you ever  
23       see or talk to Neil again?

24          A.     Not to my knowledge.

25          Q.     Do you know anyone named Elizabeth Millett?

1 A. Not to my knowledge.

2 Q. Do you know anyone named Peter Duguay?

3 A. No. Not to my knowledge.

4 MS. KRASINSKI: No further questions.

5 THE COURT: All right. Attorney Falkner.

6 CROSS-EXAMINATION

7 BY MR. FALKNER:

8 Q. So this is the box you got, right?

9 A. Yes, it is.

10 Q. The box itself is pretty heavy, right?

11 A. It box itself is light, just awkward.

12 Q. Okay. But it's big, right?

13 A. Yes.

14 Q. And it had this shotgun in it, right?

15 A. Appears though.

16 Q. And this other part of the shotgun?

17 A. Yes.

18 Q. And this?

19 A. (Nods head.) Yes.

20 Q. And this is the pistol that I was just showing  
21 you?

22 A. I believe so.

23 Q. And this rifle?

24 A. Yes.

25 Q. And this bag of ammunition?

1 A. Looks right.

2 Q. And this bag of ammunition?

3 A. Yes.

4 Q. And all of these magazines?

5 A. I can't see for certain, but it looks -- it  
6 appears to be about right.

7 MR. FALKNER: May I approach the witness, your  
8 Honor?

9 THE COURT: Yes.

10 Q. All of these magazines, right?

11 A. Short a few.

12 Q. You mean there were more?

13 A. There were more.

14 MR. FALKNER: May I show the jury, your Honor?

15 THE COURT: Yes.

16 Q. And this box, correct?

17 A. Yes.

18 Q. And in this box are more magazines, correct?

19 A. Yes.

20 Q. And this box --

21 A. (Nods head.)

22 Q. -- there are more magazines in here, right?

23 A. I believe so, yes.

24 Q. And the holster?

25 A. Okay.

1 Q. And there were other items as well, right?

2 A. Yes.

3 Q. There was a BB gun in there?

4 A. There was a BB gun in there.

5 Q. With all that stuff in this box -- oh, there  
6 were also blankets in this box, right?

7 A. Yes.

8 Q. At least three, right?

9 A. I recall two, but ...

10 Q. So the weapons were wrapped in blankets,  
11 right?

12 A. Yes.

13 Q. So with all of that, this box here was very  
14 heavy, wasn't it?

15 A. It was decent weight, yes.

16 Q. In fact, it took you and Neil both to put it  
17 into the back of the truck, right?

18 A. No.

19 Q. You did it by yourself?

20 A. No, Neil did it by himself.

21 Q. Neil is the one that put it in the back of  
22 your truck?

23 A. Yes.

24 Q. Okay. But when the -- when that went up to  
25 your room, you had help carrying that up, right?

1 A. Yes.

2 Q. It was too heavy to carry up three flights of  
3 stairs, right?

4 A. (Nods head.) It was more awkward, but yes.

5 Q. And when the FBI came to your house  
6 unannounced, you and your dad had to carry that down the  
7 stairs together, right?

8 A. (Nods head.)

9 THE COURT: You just shook your head yes.

10 THE WITNESS: Yes. Sorry.

11 THE COURT: That's all right.

12 Q. Fair to say it was surprising to have the FBI  
13 show up at your home on the day before Thanksgiving?

14 A. Yes.

15 Q. Embarrassing, right?

16 A. Yes.

17 Q. You were very upset, were you not?

18 A. Yes.

19 Q. And at the time the FBI showed up at your  
20 house, you knew that you had gotten all of those weapons  
21 from someone that wasn't allowed to have weapons, right?

22 A. I -- I'd have to say probably, yes.

23 Q. Because Johnathon had told you that he wasn't  
24 supposed to have weapons, hadn't he?

25 A. Yes.



1 Q. And he told that to you before he gave you the  
2 weapons?

3 A. Before who gave me the weapons?

4 Q. Johnathon told you that Johnathon wasn't  
5 supposed to have weapons before --

6 A. Correct.

7 Q. -- you took custody of those weapons --

8 A. Correct.

9 Q. -- right?

10 And what originally Johnathon had told you was  
11 that he needed to borrow \$300, right?

12 A. He -- from what I gathered, he said he could  
13 get Stephanie back with money. I didn't technically  
14 believe it, but he asked to borrow money. I gave him  
15 the money.

16 Q. Who came up with the sum of \$300?

17 A. He asked me what I could afford and that's  
18 what I came up with.

19 Q. You told him you'd give him \$300?

20 A. Yup.

21 Q. Did you ask for collateral or did Johnathon  
22 come up with the idea of giving you collateral?

23 A. He offered.

24 Q. He offered what?

25 A. He offered stuff for collateral.

1           Q.    And there were various things that were  
2   offered for collateral?

3           A.    Yes.

4           Q.    From the guns to, you said, a --

5           A.    Dirt bike, a four-wheeler.

6           Q.    Who chose the collateral?

7           A.    I didn't have a preference, personally. He  
8   said: Why don't you take the guns; I can't have them  
9   anyway.

10          Q.    And do you have any idea how much the guns are  
11   worth?

12          A.    No.

13          Q.    Did you think that the rifle, the pistol, the  
14   shotgun, all that ammunition and the BB gun and  
15   everything else in that box, probably worth more than  
16   \$300?

17          A.    Probably.

18          Q.    By a lot, right?

19          A.    Yeah.

20          Q.    You didn't think you were buying these guns  
21   for \$300, did you?

22          A.    No.

23          Q.    But you didn't expect to be paid back either,  
24   did you?

25          A.    It was iffy with Johnathon.

1           Q.     So you were hoping to get a lot more than \$300  
2     worth of guns for \$300, right?

3           A.     Even if Johnathon hadn't paid me back, in my  
4     mind, in my personal heart, whatever, if Johnathon  
5     didn't pay me back, who cared. I've known Johnathon  
6     20-something years.

7                     If Nancy and -- Nancy, as far as I know,  
8     pretty much who has say of -- has the guns. If they had  
9     asked for me to -- for them back, I would have given  
10    them back.

11          Q.     So you gave him \$300 at his request?

12          A.     Yup.

13          Q.     You didn't care whether you got the money  
14    back?

15          A.     (Nods head.)

16          Q.     But you took --

17          A.     They --

18          Q.     You took however many hundreds or thousands of  
19    dollars worth of firearms as collateral for that \$300,  
20    right?

21          A.     Correct.

22          Q.     Pretty good deal, huh?

23          A.     (Shrugs shoulders.)

24          Q.     Now, after you made the deal for these weapons  
25    that were coming from somebody that you had been told

1 wasn't allowed to possess them, at some point you were  
2 told that they belonged to a Roscoe Whitney, right?

3 A. Yes. Or -- I was told that Roscoe was holding  
4 on to them.

5 Q. Okay. And you had bumped into Roscoe around  
6 the campground before, right?

7 A. I may have. I do not remember names and faces  
8 very well. But as far as I'm concerned, have we  
9 actually fully met? I don't believe so.

10 Q. He wasn't a complete stranger who you'd never  
11 heard of before at the time?

12 A. Again, names and faces.

13 Q. Okay. So I just want to be clear. You hung  
14 around Nancy and Les's campground from time to time,  
15 right?

16 A. At one point I worked for them, yes.

17 Q. And Roscoe Whitney was a regular camper at  
18 that campground, right?

19 A. I don't know.

20 Q. You socialized a lot with Nancy and Les and  
21 Johnathon, right, during the time that you were camping  
22 there?

23 A. Yes.

24 Q. Fairly small circle of friends hanging out at  
25 the campground, right?

1           A.     I don't know. I'm -- I pretty much stay to  
2 myself most of the time.

3           Q.     Now, you also knew when you took the guns that  
4 Stephanie Irish had recently left Johnathon and that he  
5 was upset about that, right?

6           A.     Yes.

7           Q.     And you don't know specifically what he was  
8 upset about other than generally that his wife had left  
9 him, right?

10          A.     If you say wife, okay. I did not know that  
11 they had actually married or not.

12          Q.     You've known both of them for years, right?

13          A.     I've known the both of them for a few years,  
14 yes.

15          Q.     You didn't attend their wedding?

16          A.     No.

17          Q.     But you knew them to have been in a close  
18 relationship for a long time, right?

19          A.     Yes.

20          Q.     Now, he also told you, he being Johnathon,  
21 that Stephanie didn't want the guns around; is that  
22 right?

23          A.     Yes, at some point in time he did say that.

24          Q.     And after Johnathon had told you that you were  
25 going to be the recipient of these guns, is that when

1 you started being in contact with Nancy and Les?

2 A. Repeat.

3 Q. Let me put it to you another way.

4 You were in contact with Nancy and Les Haskell  
5 before Johnathon contacted you about these guns and  
6 after, right?

7 A. Probably, yeah.

8 Q. You were going to go to Thanksgiving with  
9 them, right?

10 A. I was considering it, yes. However --

11 Q. During -- during your direct examination, you  
12 said they said to contact Roscoe. Who was the they?

13 A. Nancy and Les. I have it under one name, both  
14 of their names together, on the phone.

15 Q. You don't know who was sending and receiving  
16 the text messages, do you?

17 A. No.

18 Q. And how many phone conversations did you have  
19 with Nancy and/or Les about these -- about the guns?

20 A. I could not say.

21 Q. And you said that the -- well, do you know  
22 whether it was five phone calls or a hundred?

23 A. I -- it could -- could be anywhere from five  
24 to 15. I -- I don't know the exact number.

25 Q. And you said your -- the phone calls were

1 mainly with Nancy, right?

2 A. Yes.

3 Q. So you did talk to Les about the guns, right?

4 A. No.

5 Q. So what did you mean when you said they were  
6 mainly with Nancy?

7 A. It -- the -- Nancy was pretty much the only  
8 one that talked to me about the guns and everything  
9 else. It was -- Les pretty much only called me for the  
10 invitation to the dinner, which I did -- which I did not  
11 attend.

12 Q. Okay. And you had five to ten phone calls  
13 with Nancy about the guns? Or five to 15, I think you  
14 said.

15 A. Yeah.

16 Q. When the agents were taking messages from your  
17 phone, did they take a picture of every contact you ever  
18 had with Nancy and Les?

19 A. I don't know. You'd have to ask them.

20 Q. Were you in control of your phone when they  
21 were taking pictures of it?

22 A. I put my phone down on the table and said, do  
23 what you need to do; if you need to confiscate it, go  
24 ahead.

25 Q. So fair to say then that you know that the

1 pictures they took of your phone are pictures of -- from  
2 your phone, but you have no idea whether they took a  
3 picture of all of the messages between you and  
4 Johnathon?

5 A. Correct.

6 Q. You have no idea whether they took a picture  
7 of all of the messages between you and Nancy or Les?

8 A. Correct.

9 Q. And you have no idea whether they took a  
10 picture of the call logs that would depict all of the  
11 calls between you and Nancy or Les?

12 A. True.

13 Q. And you have no idea whether they took a  
14 picture of all of the calls between you and Johnathon?

15 A. True.

16 Q. So you don't know whether these are selective  
17 photographs or complete photographs?

18 A. I do not know.

19 Q. Did they talk about taking your phone?

20 A. They tried to plug it into their computer to  
21 try and download it. They took pictures of it. Beyond  
22 that, as I said, here's my phone, if you need it, take  
23 it. They chose not to take it. They told me not -- not  
24 to delete anything on the phone and I did not.

25 Q. Did they ever come back for the phone?



1 A. No. I still have the phone.

2 MR. FALKNER: May I have a moment, your Honor?

3 THE COURT: Yes.

4 Q. Now, I want to go in particular to  
5 Exhibit 29C.

6 Okay. And I'm looking at the page that ends  
7 in 0063. You remember looking at this during your  
8 direct examination?

9 A. Uh-huh.

10 Q. "Gary, sorry for the early hour. Stephanie  
11 will be making contact with Roscoe, then presumably you,  
12 to verfiy" -- I assume that means verify --

13 A. Uh-huh.

14 Q. -- "location, how long you had them, that you  
15 picked them up from Roscoe, et cetera, thank you."

16 And you received that on November 24th at 6:27  
17 a.m., right?

18 A. Yes.

19 Q. And your response was to -- this is your text  
20 message to Johnathon, right?

21 A. Yup.

22 Q. "Stop giving info."

23 A. Yes.

24 Q. "People don't need to know who has what."

25 A. Correct.

1 Q. "Just that they were gone."

2 A. (Shrugging shoulders.)

3 Q. And you sent that on November 24th at 6:31  
4 a.m.?

5 A. Yup.

6 Q. Now -- and you responded -- Johnathon  
7 responded to you: I have not given any info; all that  
8 was said was she needs to talk to Roscoe; I have no idea  
9 if he was going to tell her or not at all; sorry, I'm  
10 out.

11 And you sent that November 24th at 6:32 a.m.,  
12 right?

13 A. He sent me that, yes.

14 Q. Right. I'm sorry. Right.

15 But that was the text message that you  
16 received from him?

17 A. Yes.

18 Q. And they were sent in that sequence?

19 A. I believe so. I --

20 Q. To the best of your memory?

21 A. Dates and times on the phone. There you go.

22 Q. You don't have any reason to believe that  
23 there were other messages in between those messages?

24 A. I just remember having to wake up at 6:30 in  
25 the morning to my phone and getting really agitated and

1     irritated.

2             Q.     At Johnathon?

3             A.     Yeah.

4             Q.     You said you were concerned about thieves  
5     finding out where the guns were.

6             A.     I say that in pretext to who hasn't had  
7     something burglarized, who hasn't had something stolen.  
8     I mean, pretty much everybody has.

9             Q.     So Johnathon Irish is telling you that guns  
10    that were in his home, that are coming to you, allegedly  
11    from Roscoe, that are known to be guns of his wife, he's  
12    telling you that he said something to Stephanie, right?

13            MS. KRASINSKI:  Objection.  I think  
14    Mr. Falkner misstated the testimony in his question.

15            THE COURT:  Approach.

16                    AT SIDEBAR

17            MS. KRASINSKI:  The question was that they  
18    were known to belong to his wife.  I don't think there's  
19    been any testimony from this witness that he understood  
20    or knew these firearms to belong to Stephanie.

21            THE COURT:  I think you can get up on redirect  
22    and ask him that, but there was some reference from  
23    Johnathon Irish in a text about Stephanie's involvement.

24                    Can you point me to something more specific?

25            MR. FALKNER:  I'll withdraw this question,

1 your Honor. I'm just going to move on to another  
2 question.

3 THE COURT: Okay.

4 MR. FALKNER: It was an inartfully worded  
5 question.

6 THE COURT: All right. Go ahead.

7 MR. FALKNER: Thank you.

8 CONCLUSION OF SIDEBAR

9 Q. Let's try it again.

10 You knew who -- even if you didn't know  
11 exactly who he was, you knew who Roscoe was in the  
12 scheme of -- in this scheme, correct?

13 A. As far as I know, Roscoe was the one that had  
14 the weapons. That's it.

15 Q. Right. So you weren't concerned that Roscoe  
16 was going to find out where the guns were, were you?

17 A. No.

18 Q. In fact, you were signing a document that  
19 Roscoe had signed saying he was giving weapons to you,  
20 right?

21 A. Correct.

22 Q. You weren't concerned that Stephanie was going  
23 to find out where the guns were, were you?

24 A. As far as I know, him and Stephanie were  
25 separated at that time. As far as who actually really

1 owned the guns or where they were kept, I have no clue.

2 Q. You knew you weren't really getting the guns  
3 from Roscoe, right?

4 A. According to the paperwork, according to what  
5 I was told, he had the ownership.

6 Q. I'll put it to you another way.

7 Those text messages were on November 24th,  
8 right?

9 A. Yeah.

10 Q. You had gotten the guns on November 17th,  
11 right?

12 A. Yeah.

13 Q. And they came from Neil Prive, right?

14 A. Yes.

15 Q. You didn't want anybody to know that you had  
16 these guns, right?

17 A. I don't need any outsider people to know.

18 Q. Like the FBI?

19 A. Like other criminals, other people. I don't  
20 know who Johnathon hangs around with anymore. I haven't  
21 really hung out with him. I mean, I don't keep many  
22 friends myself.

23 Q. Now, sir, let's talk about another text  
24 message.

25 Do you remember on your direct examination one

1 of the text messages that said something about no need  
2 to come to court?

3 A. Yes.

4 Q. And that was from Nancy and/or Les, right?

5 A. Correct.

6 Q. And Johnathon wants to keep you in the  
7 background, right?

8 A. I --

9 Q. That's what the text message said.

10 A. That's what the text message said, yes.

11 Q. Had you been asked to come to court?

12 A. At one point, Johnathon did ask me to go to  
13 court up in Tilton.

14 Q. What court was he talking about?

15 A. I truthfully do not know. I don't know the  
16 reason why. I had to work that day and so I didn't go.

17 Q. Did he tell you where you might have to go?

18 A. He said Tilton. Other than that, I don't  
19 know. I -- I remember him telling me something about  
20 it, but I did not actually keep it in my head or  
21 anything like that.

22 Q. All right. Now, were you surprised then  
23 that -- well, let me put it to you another way.

24 You said that Johnathon asked you to go to  
25 court, but you had to work that day.

1 A. Yeah.

2 Q. Did you tell that to Johnathon?

3 A. I'm pretty sure I said that I had to work that  
4 day.

5 Q. Because this text message said that you no  
6 longer have to come to court, right?

7 A. Correct.

8 Q. Was it your understanding at the time you got  
9 that text message that Johnathon still wanted you to go  
10 to court?

11 A. Probably. I don't know. I mean, again, I  
12 wasn't going to show up because I had to work.

13 Q. When it said that Johnathon wanted to keep you  
14 in the background --

15 A. I have no clue.

16 Q. Did that message seem odd to you at the time?

17 A. Not really.

18 Q. You didn't think there was anything -- what  
19 were you being kept in the background of?

20 A. I don't know.

21 Q. Now, let's talk about the text message that  
22 said, I have a power of attorney for Roscoe, so it's all  
23 legal.

24 Do you remember reading that text message?

25 And this is Exhibit 29D, your Honor.

1           You remember reading this message that you  
2       received from Nancy or Les?

3           A.    I -- now that I see it, yes, I remember it.

4           Q.    And do you remember reading it during your  
5       direct examination just a few minutes ago?

6           A.    I guess, yeah.

7           Q.    Had you asked Nancy whether it was legal?

8           A.    No, I did not ask.

9           Q.    It wasn't Nancy's signature on the transfer  
10       document, was it?

11          A.    No, it was not.

12          Q.    It was Roscoe's signature.

13          A.    Yes, it was.

14          Q.    Did you ask Nancy what a power of attorney had  
15       to do with it at all?

16          A.    No, I did not.

17          Q.    Did it concern you that she was representing  
18       she had a power of attorney?

19          A.    To tell you the truth, I didn't -- I didn't  
20       even associate POA with power of attorney. I'm not  
21       tech-savvy.

22          Q.    Now, when the guns came into your house --

23          A.    Yes.

24          Q.    -- you made a detailed list of what was --  
25       went into that?



1 A. Yes.

2 Q. I shouldn't say what went into that. What you  
3 took out of that chest, right?

4 A. Correct.

5 Q. And your detailed list itemized all the items  
6 that I showed to you while you were on the witness  
7 stand, right?

8 A. Minus a couple of cases. I didn't write those  
9 down.

10 Q. Good amount of stuff, right?

11 A. Yes.

12 Q. And -- and you needed some kind of power of  
13 attorney, I'm -- strike that.

14 You needed some kind of bill of sale, right?

15 A. Letter of transfer, yeah.

16 Q. And so even though you had been very careful  
17 to itemize all the weapons that came out of that box,  
18 this transfer of weapons didn't mention any of those  
19 things, did it?

20 A. No.

21 Q. It only mentioned the pistol and the rifle and  
22 ammunition, right?

23 A. Various mags, yeah.

24 Q. Didn't say anything about a shotgun?

25 A. No.

1 Q. Didn't say anything about a BB gun?

2 A. Correct.

3 Q. Didn't say anything about the -- the suit or  
4 whatever it was?

5 A. The chem suit, yeah.

6 Q. So you -- even after you received that  
7 document and signed it, you didn't have any record of --  
8 or bill of sale, as you called it, as to the shotgun,  
9 right?

10 A. Correct.

11 Q. Just returning to the weapons as the  
12 collateral, why would you need a bill of sale if this  
13 wasn't a sale? I'll withdraw that.

14 A. That's a good question. Truthfully, I didn't  
15 think about it, but okay.

16 Q. You didn't think about why you would need a  
17 bill of sale for something you weren't buying?

18 A. Pretty much, yeah. I'm a simple person. I  
19 usually take people for their word.

20 MR. FALKNER: Just a few more questions, your  
21 Honor.

22 Q. When -- when you were working at the -- by the  
23 way, is Saddleback the name of the campground?

24 A. That Nancy and Les used to own?

25 Q. Right.

1           A.     And -- but it was not the one that me and  
2     Johnathon had met recently.

3           Q.     Okay. But you used to work at the Saddleback  
4     Campground, right?

5           A.     Yup.

6           Q.     And you lived there for some period of time?

7           A.     A couple months. Maybe a month.

8           Q.     And you lived with the Haskells in Hampton  
9     Falls at some point?

10          A.     Yes.

11          Q.     Johnathon originally offered his truck for  
12     collateral, right?

13          A.     He said the truck was one thing that he didn't  
14     want to give up.

15          Q.     Okay.

16          A.     His Bronco or whatever.

17          Q.     Did he tell you that he couldn't have the guns  
18     around, but that the guns actually belonged to  
19     Stephanie?

20          A.     No, he did not.

21          Q.     Did he tell you who the guns belonged to?

22          A.     He told me that he had guns. I did not know  
23     who ...

24          Q.     By the way, you were visited twice by the FBI,  
25     right?

1 A. Yes.

2 Q. The first time was when they came and took  
3 this box of guns?

4 A. Three times.

5 Q. Three times?

6 A. Three times.

7 Q. Let's start with the first one.

8 The first one was the day before Thanksgiving,  
9 right?

10 A. The first time was like two days after I sent  
11 back the weapons transfer signature thing. And it was  
12 literally two days after that that the FBI came and  
13 picked up the guns.

14 Q. And that's the day that they surprised you in  
15 the morning on the day before Thanksgiving, right?

16 A. If it was the day before Thanksgiving, it was.  
17 I -- I couldn't tell you.

18 Q. Were you working that day?

19 A. Yes, I was. I was supposed to be.

20 Q. Did you go to work that day?

21 A. I did go in late, yes.

22 Q. How long did you talk with the FBI?

23 A. Approximately two hours, roughly, I guess.

24 Q. They interviewed you at length about the guns,  
25 right?

1           A.     They asked me who I got them from or --  
2 actually, I should say they knocked on the door, asked  
3 for me. They said, did you pick up some guns from  
4 Johnathon Irish? I knew exactly which ones they were  
5 talking about. I walked upstairs, I grabbed the case,  
6 and said yeah.

7           Q.     And then -- and then they spent some time  
8 talking to you, right?

9           A.     A little bit, yeah.

10          Q.     They even had you go through the case and took  
11 pictures of the weapons in your hands, right?

12          A.     They -- I don't believe that they took  
13 pictures right then and there. I don't remember  
14 exactly, but I know that I showed them each of the  
15 weapons.

16                 MR. FALKNER: This is Exhibit 28A, your Honor.

17          Q.     Is that the black box in your kitchen?

18          A.     Yes, it is.

19          Q.     This is Exhibit 28B. Is that the black box in  
20 your kitchen?

21          A.     Yup.

22          Q.     It's just open now?

23          A.     Yup.

24          Q.     It's full to the top, right?

25          A.     Yes.

1           Q.     This is Exhibit 28G. Is that the gun in your  
2 hands?

3           A.     I cannot verify that it is in my hands.

4           Q.     This is 28L. Is that ammunition in your  
5 hands?

6           A.     That appears to be, yeah.

7           MR. FALKNER: Your Honor, I'm going to  
8 approach him with the physical exhibit, if I may.

9           THE COURT: Yes.

10          Q.     Take a closer look at Exhibit 28G. Is that  
11 your kitchen floor underneath the gun, even though it's  
12 in darkness?

13          A.     It appears so.

14          Q.     Does that help you determine whether the gun  
15 is in your hands in that picture?

16          A.     No, it does not.

17          Q.     But that picture appears to have been taken in  
18 your kitchen?

19          A.     Yes.

20          Q.     And then you sat down at the kitchen table and  
21 talked to them, right?

22          A.     Yes.

23          Q.     And how long was the conversation itself as  
24 opposed to going through the case?

25          A.     Probably -- I think it was pretty quick. I

1 mean, they -- they said, yeah, we're going to have to  
2 seize the weapons, did a paper, there you go.

3 Q. Well, they talked to you about Neil, right?

4 A. I don't remember at that time. It's possible.  
5 I don't know.

6 Q. At any point during your conversation with  
7 those two agents at your home did you tell them that  
8 Johnathon had asked to get one of the weapons back?

9 A. I do not remember. I think I did.

10 Q. Excuse me?

11 A. I said I do not remember. I -- I'm -- I think  
12 I did.

13 Q. You think that you did tell them that?

14 A. At one point in time.

15 Q. Did you tell it to them during that meeting in  
16 the kitchen?

17 A. All three -- well, two of the meetings took  
18 place in the kitchen, one of them was just for the  
19 subpoena.

20 Q. Okay. Now, the second time that you met --

21 A. They came back with the cell phone --

22 Q. On December 6th or so? Does that sound about  
23 right, even if it's not the exact date?

24 A. Sounds about right. I don't know.

25 Q. A week or two after the first time you saw

1       them?

2           A.     Yeah.

3           Q.     This time, was it a prearranged visit?

4           A.     No, not really.

5           Q.     They showed up unannounced again?

6           A.     I don't remember setting up any type of a time  
7       frame. I'll put it that way. I mean, they just showed  
8       up; okay, we're going to try and clone your phone, try  
9       and get all the information out of it; yup, okay.

10          Q.     And was that with one of the two agents that  
11       you had met the first time?

12          A.     Yes.

13          Q.     Only one of them this time, though, right?

14          A.     Correct.

15          Q.     At any point during that conversation did you  
16       ever tell the FBI agent that Johnathon Irish had asked  
17       to get one of the weapons back from you?

18          A.     I -- as I said, I don't remember. I don't  
19       know. I remember saying it to someone. I just don't  
20       recall who.

21          Q.     The most recent meeting was after you got a  
22       trial subpoena, right?

23          A.     Yeah.

24          Q.     That was fairly recently?

25          A.     Yes.



1 Q. Within the last week or two?

2 A. Yes.

3 Q. Where was that meeting?

4 A. FBI office, Portsmouth.

5 Q. Okay. And who was at the meeting?

6 A. Jen, Kevin -- I'm terrible with names again.

7 Q. Okay. And at that meeting, is that when you  
8 disclosed this incident when Johnathon Irish had  
9 supposedly asked for one of the firearms back?

10 A. It very well could have been.

11 Q. That was the first time you ever told anyone  
12 that, right?

13 A. Very well could have been.

14 Q. It was your communications with Nancy that  
15 told you what you were and were not supposed to do with  
16 these guns, right?

17 A. As far as?

18 Q. As far as this entire transaction, right?  
19 Nancy told you who to speak with, when to speak with  
20 them, et cetera, right? She prepared the documents?

21 A. Yeah.

22 Q. All of those things, right?

23 A. As far as I know.

24 Q. Johnathon never told you what you should do  
25 with the guns, did he?

1 A. No.

2 Q. And he never told you what to say to anyone,  
3 did he?

4 A. No.

5 Q. But Nancy did, didn't she?

6 A. As far as?

7 Q. Did she tell you what to say to the FBI?

8 A. No.

9 MR. FALKNER: Just one more moment, your  
10 Honor.

11 Nothing further.

12 THE COURT: All right. Attorney Krasinski,  
13 how much time would you need?

14 MS. KRASINSKI: Brief, your Honor.

15 THE COURT: Brief. Minutes?

16 MS. KRASINSKI: Five or six questions, your  
17 Honor.

18 THE COURT: Okay. Because it will save us  
19 some time if we can allow that. Can the jury handle  
20 five to six --

21 THE JUROR: Can you turn this wide screen off?

22 THE COURT: Okay. Let's turn that off. It's  
23 bothering people.

24 Better? All right.

25 THE COURT: Go ahead, Attorney Krasinski.

REDIRECT EXAMINATION

BY MS. KRASINSKI:

Q. During your conversation with Attorney Falkner, you said something about the defendant saying something about getting Stephanie back.

A. Yes.

Q. And I -- I'm not sure I understood that.

Were you saying that at some point the defendant said he thought he could get his -- Stephanie back if he got the guns out of the house?

A. As far as I knew, he did say something about I -- I can't have the guns -- how should I put it? Let me rearrange my thoughts here.

He -- he could not have access, so he needed someone that would not allow him access to them.

Q. And how did that relate to whether or not he was going to get Stephanie back?

MR. FALKNER: Objection, your Honor. May we be seen at sidebar?

THE COURT: Yes.

AT SIDEBAR

MR. FALKNER: This line of questioning is misstating his testimony. His testimony was that he needed the money in order to get Stephanie back. That's what he testified to. He never said he needed to get

1 the guns to get Stephanie back. And this entire line of  
2 questioning is assuming that he said something that he  
3 just didn't say.

4 MS. KRASINSKI: I -- I honestly did not  
5 understand what he said and I'm just trying to  
6 understand.

7 THE COURT: Okay. He -- I remember him  
8 connecting the \$300, that somehow money would get  
9 Stephanie back. I remember him testifying to that. I  
10 don't know that it's clear what was meant by any of  
11 that. So I think if you could move along --

12 MS. KRASINSKI: I will, your Honor.

13 THE COURT: All right. Thank you.

14 MR. FALKNER: Thank you.

15 THE COURT: Sustained.

16 CONCLUSION OF SIDEBAR

17 Q. Now, you mentioned that you were told that  
18 Roscoe owned the weapons.

19 A. That's what I was led to believe.

20 Q. By whom?

21 A. By the paperwork, by Nancy stating that  
22 Roscoe -- she had to get ahold of Roscoe who owned the  
23 weapons.

24 MS. KRASINSKI: Nothing further, your Honor.

25 THE COURT: Anything further, Attorney

1 Falkner?

2 RECROSS-EXAMINATION

3 BY MR. FALKNER:

4 Q. Regardless of who owned the weapons, it was  
5 your understanding that Johnathon is the one who wanted  
6 to get rid of these weapons, right?

7 A. That's fair to say, yeah.

8 Q. And your testimony during cross-examination  
9 was that he needed the \$300 to somehow be involved in  
10 getting Stephanie back, right?

11 A. Yup.

12 Q. You don't know -- do you know how the \$300 was  
13 connected with trying to get Stephanie back or not?

14 A. Truthfully, I did not listen to him very much  
15 because it did not seem credible to me.

16 Q. He explained what he was going to do with the  
17 \$300 to try to get Stephanie back, but you don't  
18 remember what it was because you weren't listening; is  
19 that right?

20 A. Pretty much, yeah.

21 MR. FALKNER: Nothing further.

22 THE COURT: All right.

23 THE WITNESS: Trying to buy somebody's love,  
24 and it's never worked.

25 MR. FALKNER: I'd move to strike, your Honor.

1 THE COURT: All right. Disregard the last  
2 comment; unresponsive.

3 Does the government have any further  
4 witnesses?

5 MS. KRASINSKI: No, your Honor.

6 THE COURT: All right.

7 MS. KRASINSKI: May the witness be excused?

8 THE COURT: Yes.

9 Mr. Roya, you may be excused.

10 THE WITNESS: Thank you.

11 THE COURT: Thank you, sir.

12 (Witness excused.)

13 MS. KRASINSKI: And with that, the government  
14 rests, your Honor.

15 THE COURT: All right.

16 MR. FALKNER: May we be seen at sidebar?

17 THE COURT: We will allow the jury to take the  
18 morning break and then we can --

19 THE CLERK: All rise for the jury.

20 (Jury excused.)

21 THE COURT: All right. I know we probably all  
22 need a little break. Let's go ahead and --

23 MR. FALKNER: Your Honor --

24 THE COURT: You don't need to approach sidebar  
25 at this point. Go ahead.

1 MR. FALKNER: Fine, your Honor.

2 I'd move for judgment of acquittal at the  
3 close of the government's case. I don't intend to  
4 present specific grounds because my understanding is if  
5 I present specific grounds, all the other grounds are  
6 waived. I'd just argue that all of the elements, the  
7 evidence is insufficient.

8 THE COURT: After viewing the evidence and  
9 considering it in the light most favorable to the  
10 government's case, I find that a rational factfinder  
11 could conclude beyond a reasonable doubt that the  
12 defendant committed the charged crime, so I deny that  
13 motion.

14 Your -- you're going to call a witness and  
15 perhaps your client. Any others?

16 MR. FALKNER: No, your Honor. Just -- I would  
17 ask with regard to Detective LeBlanc, I believe he's --  
18 Task Force Officer LeBlanc, I -- I discussed the two  
19 specific areas that I intend to -- intended to inquire  
20 with the government as a result of Mr. Roy's testimony.

21 I would just intend to address one more  
22 specific area and I don't know whether the government  
23 has any objection to that or not before I raise it with  
24 your Honor.

25 THE COURT: Any problem calling Mr. LeBlanc on

1 one issue? And apparently the two of you know what that  
2 issue is.

3 MS. KRASINSKI: Well, we discussed two and I  
4 don't have an issue with that. I don't know what the  
5 third is.

6 MR. FALKNER: The third, your Honor, is simply  
7 to establish that in neither of the -- in the meeting in  
8 the kitchen nor in the meeting -- the second meeting did  
9 Mr. Roy a ever disclose to federal agents that Mr. Irish  
10 had asked for one of the weapons back at any point.

11 THE COURT: All right. Do you have any  
12 problem with that?

13 MS. KRASINSKI: On the third one, I don't  
14 think that fits within 613(b). He said he didn't  
15 recall. He said he said it at some point; he didn't  
16 know if it was in the first, the second, or the meeting  
17 as it relates to the subpoena --

18 THE COURT: I'm going to allow it. I'm going  
19 to allow the question.

20 MS. KRASINSKI: All right.

21 THE COURT: All right.

22 Let me go ahead now -- unless you have any  
23 objection, I'm going to go ahead and make the final  
24 Petrozziello ruling.

25 Do you have any --



1 MR. FALKNER: Your Honor, does it --

2 THE COURT: I can wait until --

3 MR. FALKNER: I'm just unclear whether it is  
4 made now or made at the close of all the evidence.

5 THE COURT: I can wait until the end. I think  
6 I've heard all the relevant evidence with respect to it  
7 and this is a good time in terms of saving the jury's  
8 time. So I can do that, however, at the end of the  
9 case.

10 MR. FALKNER: If your Honor wishes to make the  
11 findings now and then simply briefly supplement it based  
12 on any additional evidence, I don't have a problem with  
13 that so that I can preserve my objection at the close of  
14 all the evidence.

15 THE COURT: I'm going to wait until the close.  
16 Okay. Anything else to discuss before --

17 MR. FALKNER: No, your Honor.

18 MS. KRASINSKI: Your Honor, while the jury's  
19 excused, is now an appropriate time to advise the  
20 defendant that it is his choice to testify or remain  
21 silent and do that while the jury is on a break or would  
22 you like to excuse them do it at a later point?

23 THE COURT: It's not my custom to. He's  
24 represented by able counsel and I think he knows his  
25 rights and I'm going to presume his counsel has talked

1 to him about his rights.

2 So, you know, unless you are urging me to do  
3 so --

4 MS. KRASINSKI: I am simply accustomed to  
5 having the Court voir dire the defendant on the record  
6 as to it being the defendant's choice. If that's not  
7 the practice in this district, then --

8 THE COURT: It's not my practice. It may be  
9 some other judges' practices.

10 Do you want me to do that, Mr. Falkner?

11 MR. FALKNER: No, your Honor. I actually  
12 think --

13 THE COURT: Yeah.

14 MR. FALKNER: -- that it's improper.

15 THE COURT: All right. Anything else before  
16 we have our morning break?

17 And then if Officer LeBlanc is short,  
18 relatively short, and you have no rebuttal, which I  
19 anticipate, and -- it all depends on whether Mr. Irish  
20 exercises his right to remain silent, exercises his  
21 right to testify. And then, depending upon the length  
22 of that, we may go straight into closing arguments.  
23 We'll take a break before I charge the jury and  
24 obviously approach sidebar to make final rulings.

25 Does that make sense?

1 MR. FALKNER: I'm sorry, your Honor. I was  
2 just trying to --

3 THE COURT: It's all going to depend on  
4 ultimately whether Mr. Irish testifies in terms of the  
5 breaks and the timing.

6 MR. FALKNER: Assuming Mr. Irish were not to  
7 testify after Mr. LeBlanc testified and the defense  
8 rested, would your Honor send the jury out to make the  
9 Petrozziello rulings at that point?

10 THE COURT: I think I'll do it at sidebar  
11 because I've already made some provisional rulings. I  
12 think I can simply incorporate those rulings and  
13 findings, reiterate them briefly and then add to them.  
14 So I think I can do that fairly quickly at sidebar and  
15 then we'll go into closings.

16 Does that work?

17 MR. FALKNER: May I have a moment to speak  
18 with Mr. Irish before the jury comes back?

19 THE COURT: We're going to have a little break  
20 now anyway, so you'll have a chance to speak to him.

21 MR. FALKNER: Thank you.

22 THE COURT: All right. So we'll come back in  
23 five, ten minutes.

24 (Recess taken from 10:55 a.m. until 11:10 a.m.)

25 THE COURT: All right. The government has

1 rested, so Attorney Falkner --

2 MR. FALKNER: The defense recalls Task Force  
3 Officer Kevin LeBlanc.

4 THE CLERK: Officer LeBlanc, please remain  
5 standing and raise your right hand.

6 **KEVIN LEBLANC**, having been first duly sworn,  
7 testified as follows:

8 THE CLERK: Thank you. Please just identify  
9 yourself again for the record.

10 THE WITNESS: Kevin LeBlanc, L-e-B-l-a-n-c.

11 THE CLERK: Thank you.

12 DIRECT EXAMINATION

13 BY MR. FALKNER:

14 Q. Good morning, Mr. LeBlanc.

15 A. Good morning.

16 Q. As part of your investigation in this case,  
17 you had occasion to interview Peter Duguay, correct?

18 A. Yes.

19 Q. At his workplace?

20 A. At a jobsite.

21 Q. And that was on October 29th of 2019?

22 A. I don't recall the exact date.

23 Q. Approximately?

24 A. Approximately.

25 Q. And you were accompanied by Agent Wesley Ross

1 Garland?

2 A. Yes.

3 Q. And during your interview, you were seeking  
4 basically whatever relevant information you could get  
5 about these guns from Mr. Duguay, correct?

6 A. Yes.

7 Q. And during that interview, did you ask about  
8 the relationship between Mr. Duguay and Mr. Irish?

9 A. Yes.

10 Q. What he told you was that Mr. Irish was a  
11 keep-your-enemies-close kind of relationship, right?

12 A. Yes.

13 Q. And at no time during that first interview did  
14 he tell you anything about an incident where Mr. Irish  
15 was purportedly racking the slide of the pistol,  
16 correct?

17 A. No.

18 Q. Then there was a follow-up phone call the same  
19 day, right?

20 A. I was not on that phone call.

21 Q. Were you on any of the phone calls?

22 A. No, sir.

23 Q. Were you aware of the information that was  
24 given to the FBI?

25 A. Yes.

1 Q. And your understanding that that information  
2 about the racking the slide was first given on the  
3 second phone call after the -- that interview?

4 A. I don't recall which phone call.

5 Q. You were involved in the creation of 302  
6 reports, correct?

7 A. Yes.

8 Q. And you reviewed the 302s that are involved in  
9 your interviews, correct?

10 A. Yes.

11 MR. FALKNER: May I approach the witness, your  
12 Honor?

13 THE COURT: Yes.

14 Q. A 302 is essentially the FBI's version of a  
15 police report, correct?

16 A. Yes.

17 Q. Can you review that and let me know if it  
18 refreshes your recollection as to when the FBI received  
19 the information about Mr. Irish racking a pistol?

20 A. Yes. I recall this now. That was after  
21 Duguay, Peter Duguay, had called back Agent Garland.  
22 And then I was filled in on that information and then we  
23 decided to give him a call back together.

24 Q. Okay. So it was a -- so you interviewed him  
25 and then he -- then he spoke with Agent Garland and then

1 you and Agent Garland then called him?

2 A. Called him back.

3 Q. And it was during that call that he first  
4 relayed this information about racking a shotgun --  
5 racking a pistol, correct?

6 A. I don't know if he told Garland on the phone  
7 before this conversation or he just repeated it back to  
8 the two of us together.

9 Q. But you weren't aware of that information when  
10 you called him back?

11 A. Honestly, I don't remember if he had told  
12 Garland that beforehand or not when we decided to call  
13 him back.

14 Q. Does your review of that report help refresh  
15 your recollection?

16 A. So, yes, we talked about he did not see the  
17 gun, but he could hear it being racked.

18 Q. And that was during the third conversation,  
19 correct, the second phone call?

20 A. This report is from when we went to the  
21 jobsite.

22 Q. Have you read the whole report?

23 A. No, I'm skimming through it to talk about --  
24 to find the areas you're talking about, sir.

25 MR. FALKNER: May I approach the witness, your

1 Honor?

2 THE COURT: Yes.

3 Q. Can I call your attention --

4 A. I'm sorry.

5 Q. -- to this agent note and this agent note.

6 A. I didn't realize there was the second page.

7 Okay. So I was not a part of that phone call,  
8 sir.

9 Q. Okay. But your review of this report, the  
10 first time that that information about racking the  
11 pistol in the truck came about was during the second  
12 phone call, correct?

13 A. Correct.

14 Q. Not during your interview of him at the  
15 jobsite?

16 A. Right.

17 Q. And not during the first phone call?

18 A. Correct.

19 MR. FALKNER: May I approach, your Honor?

20 THE COURT: Yes.

21 Q. You also had occasion to interview Gary Roy, a  
22 correct?

23 A. Yes, sir.

24 Q. The first time was, as you testified to the  
25 first time you were on the witness stand, the day before



1 Thanksgiving, correct?

2 A. Yes.

3 Q. And during that interview, you reviewed the  
4 contents of the box and also discussed any information  
5 that you could get with him about those weapons, right?

6 A. Yes.

7 Q. And about Johnathon Irish?

8 A. Yes.

9 Q. And he spent a good amount of time talking to  
10 you about that, right?

11 A. Yes.

12 Q. Answered all your questions?

13 A. Yes.

14 Q. Volunteered information?

15 A. As we asked it, he answered.

16 Q. And at no time during that conversation did he  
17 say anything at all about Johnathon Irish asking to get  
18 any of the firearms back, did he?

19 A. Not that I recall.

20 Q. You don't recall, or that information wasn't  
21 given?

22 A. I don't recall.

23 Q. Would a review of the 302 report refresh your  
24 recollection?

25 A. Sure.

1 MR. FALKNER: May I approach, your Honor?

2 THE COURT: Yes.

3 Q. Is that the report of your interview of Gary  
4 Roya on the day before Thanksgiving?

5 A. Yes, sir. On November 27th.

6 It does not indicate that that happened.

7 Q. He never told you anything like that during  
8 that interview?

9 A. Correct.

10 Q. And you went back to visit him alone on  
11 December 6th of 2019, correct?

12 A. No, when I went back I had another task force  
13 officer with me.

14 Q. Okay. Well, when you went back, that was on  
15 December 6th, 2019, right?

16 A. I'd have to check the report for the exact  
17 date.

18 Q. Would you like to see your report? Would that  
19 refresh your recollection?

20 A. If you need an exact date, yes, sir.

21 Q. Was it approximately December 6th?

22 A. Sure.

23 Q. And during that interview, that's when you  
24 tried to download the contents of his phone without  
25 success, right?

1 A. Yes.

2 Q. And -- but you also interviewed him further  
3 about the facts of the case, right?

4 A. I think we made general talk, but the main  
5 purpose was to get the information off the phone.

6 Q. At any point during -- well, you asked him  
7 about whether he had any further contacts with Johnathon  
8 Irish, right?

9 A. I believe so, yes.

10 Q. And with Nancy Haskell?

11 A. Yes.

12 Q. At any point during that interview did he say  
13 anything at all about Johnathon asking to get the  
14 firearms back?

15 A. I don't believe so.

16 MR. FALKNER: I have nothing further, your  
17 Honor.

18 THE COURT: All right. Any questions?

19 CROSS-EXAMINATION

20 BY MS. WEILAND:

21 Q. Officer LeBlanc, you mentioned that another  
22 agent by the name of -- was it Wes Garland that  
23 accompanied you on your interview with Gary Roya?

24 A. No, it was Patrick Hennessey.

25 Q. I'm sorry. I'm sorry. Let me be more

1 specific.

2 Your very first visit to Mr. Roya's house --

3 I'm sorry. Just a moment, your Honor.

4 Was it your testimony -- and if I've  
5 misunderstood, please correct me -- that Special Agent  
6 Garland accompanied you on some of your witness  
7 interviews?

8 A. Yes.

9 Q. Okay. Did that include any of your interviews  
10 with Dylan Roosa?

11 MR. FALKNER: Objection.

12 THE COURT: Approach, please.

13 AT SIDEBAR

14 MS. WEILAND: This is my only question on this  
15 topic.

16 THE COURT: How does it come in? It wasn't a  
17 subject of direct. You can tell me how it comes in.

18 MS. WEILAND: Well, he mentioned that Special  
19 Agent Garland did accompany him in participating in this  
20 witness interview. I just want to ask whether Special  
21 Agent Garland accompanied him on other interviews as  
22 well.

23 If your Honor would like me to withdraw that  
24 question, but I -- I believe it's -- I do intend to ask  
25 a follow-up question relating specifically to the fact

1     that Special Agent Garland -- that did come up as far as  
2     in direct, his interview of Mr. Roy.

3             MR. FALKNER: I don't understand how  
4     accompanying him on an interview with Dylan Roosa --

5             THE COURT: I'm not seeing the relevance  
6     either.

7             MS. WEILAND: I can withdraw that question --

8             THE COURT: Oh.

9             MS. WEILAND: -- but I do intend to ask  
10    whether he sees Special Agent Garland in the courtroom.

11            Special Agent Garland -- and I believe this  
12    came out on direct, correct me if I'm wrong -- was with  
13    him when he interviewed Gary Roy on the first occasion.  
14    I believe that was the testimony.

15            THE COURT: And why does the jury need to know  
16    he's in the courtroom? Why does the jury need to know  
17    whether he's in the courtroom?

18            MS. WEILAND: Your Honor, I believe during  
19    the testimony of another witness there may have been a  
20    misidentification. I just want to ask whether he sees  
21    Special Agent Garland in the courtroom because Special  
22    Agent Garland was not a witness in this case, but I  
23    think he got him confused with another witness in the  
24    case.

25            THE COURT: I'm not going to allow it. I

1 don't see the relevance.

2 MS. WEILAND: Okay.

3 THE COURT: Go ahead.

4 CONCLUSION OF SIDEBAR

5 MS. WEILAND: I have nothing else, your Honor.

6 THE COURT: All right. Anything at all  
7 further, Attorney Falkner?

8 MR. FALKNER: The defense rests.

9 THE COURT: All right.

10 Officer LeBlanc, you may step down and be  
11 excused, sir. Thank you.

12 THE WITNESS: Thank you.

13 (Witness excused.)

14 THE COURT: All right. Counsel, please  
15 approach.

16 AT SIDEBAR

17 MR. FALKNER: First, I raise again the motion  
18 for a judgment of acquittal.

19 THE COURT: Let me make sure -- are you going  
20 to rebut anything? I assume not, but I'm just asking  
21 for the record.

22 MS. KRASINSKI: Correct, your Honor.

23 THE COURT: You both rest your entire case?

24 MS. KRASINSKI: Yes, your Honor.

25 MR. FALKNER: Right.

1 THE COURT: Okay. All right. So your Rule  
2 29, you're basically making the same argument --

3 MR. FALKNER: The same argument.

4 THE COURT: -- general argument.

5 All right. I make the same finding that after  
6 viewing the evidence in the light most favorable to the  
7 government's case, I find that a rational factfinder  
8 could conclude beyond a reasonable doubt the defendant  
9 committed the charged crime.

10 All right. Now I'm going to --

11 MR. FALKNER: I --

12 THE COURT: -- rule on the Petrozziello issue.

13 MR. FALKNER: I was -- if I could, I'm  
14 objecting on the record, your Honor, to the Petrozziello  
15 evidence, the coconspirator hearsay evidence, in  
16 particular to the text messages of Nancy Haskell, but to  
17 any other statements of Nancy Haskell.

18 THE COURT: Okay. All right. And I'm going  
19 to shorten this by incorporating my earlier findings.  
20 I'm going to go through them in a summary fashion and  
21 add to them only.

22 First, I find that they are admissible. This  
23 was specifically Exhibit 29D that you also -- any  
24 statement by Nancy Haskell that came in. And I find  
25 that -- now, your Petrozziello ruling, as I recall, was

1 limited to Exhibit 29D and those are the statements that  
2 I made my original findings on, so I'm a little bit  
3 confused about --

4 MR. FALKNER: Well, I --

5 THE COURT: Those are the statements that you  
6 were --

7 MR. FALKNER: Those are the statements in  
8 particular.

9 THE COURT: Okay. All right. So I am ruling  
10 that Exhibit 29D comes in as a full exhibit and that my  
11 provisional ruling is correct and the factors, the four  
12 factors, I find by a preponderance, number one, the  
13 existence of a conspiracy for all the reasons that I  
14 said earlier in the case, but I would also add that now  
15 that I've heard the testimony Gary Roy, which also  
16 confirms the existence of this conspiracy between  
17 Johnathon Irish and his mother to conceal Johnathon  
18 Irish's possession of the guns. Again, really by way of  
19 summary, the jail call itself also supports that.

20 The evidence of Neil Prive and Roscoe Whitney  
21 as well as now Gary Roy, the content of the texts  
22 themselves in Exhibit 29D corroborate the conspiracy  
23 which is evidenced by the jail call.

24 I reiterate that I find a -- that to be a  
25 single conspiracy looking at the three factors, the



1 existence of a common goal, the overlap among the  
2 activities' participants, now including Mr. Roya's  
3 testimony as well, and then the interdependence among  
4 the participants in all parts of this scheme are part of  
5 the same conspiracy and necessary for it to be pulled  
6 off; and, second, the defendant's membership in that  
7 conspiracy, same evidence, the jail call, the content of  
8 Exhibit 29D, also the content of Exhibit 29C and the  
9 additional evidence of the conversations with Mr. Irish  
10 and various witnesses, particularly Mr. Roya.

11           The mom's membership in the same conspiracy, I  
12 would add to what I previously found with respect to the  
13 jail call, the content of the texts in 29D and 29C, as  
14 well as Mr. Whitney's testimony, now Mr. Roya's  
15 testimony. He understood that these texts were coming  
16 from Nancy even though his phone contact had both their  
17 names. He specifically said there were phone calls from  
18 that same contact on his phone, calls -- between five  
19 and 15 calls about the guns and that all calls about the  
20 guns were with Nancy and not with Les and he understood  
21 that the texts were coming from Nancy. So I would add  
22 that to my finding that she, the mom, the declarant, was  
23 a member in the same conspiracy.

24           And then finally the statements are made in  
25 furtherance of the conspiracy and I would just reiterate

1 all the findings that I made with respect to that  
2 earlier in the case. I find that a preponderance of the  
3 evidence supports this and it's not simply the texts  
4 themselves; it is all of the other corroborating  
5 evidence that I've just summarized.

6 So that's my ruling on that.

7 And I need to check with you again about the  
8 issue of forfeiture. Do you want that submitted to the  
9 jury?

10 MR. FALKNER: Yes, your Honor. And just --  
11 I'm sorry, I -- I think I was a little confused and  
12 misspoke myself.

13 I'm not sure whether I specifically raised the  
14 objection at the time. I'm asking your Honor to  
15 consider it as to not all statements of Nancy Haskell,  
16 but specifically the phone contacts and --

17 THE COURT: The 29D.

18 MR. FALKNER: But the telephone calls from her  
19 to him as well, because I -- I viewed it all -- all of  
20 that evidence as of a piece. In other words, her --

21 THE COURT: Okay. So it would be -- I can't  
22 remember the specific exhibits, but any exhibits in 29,  
23 29B, I find that that is also supported by all the other  
24 findings that I've made, so those are also admissible.

25 MR. FALKNER: And her statements on the

1 telephone to Gary Roy.

2 THE COURT: Yes. His testimony is also  
3 corroborated with the conspiracy and all of that is  
4 admissible for the same reasons.

5 MR. FALKNER: And please note my objection.

6 THE COURT: I do.

7 And now we're going to start closing  
8 arguments.

9 MR. FALKNER: Yes, your Honor. Does your  
10 Honor -- I know that we'll have a chance again, but I  
11 just wanted to now reiterate my objection to the not  
12 giving of a missing witness instruction.

13 THE COURT: That's preserved. Go ahead. That  
14 is denied.

15 MR. FALKNER: And also to the not -- not using  
16 the special verdict form in the -- vis-a-vis which gun  
17 was possessed.

18 THE COURT: That is also preserved and I --

19 MR. FALKNER: And to the extent it hasn't  
20 already been done, I am requesting that the jury be  
21 retained to deliberate about the issue of forfeiture.

22 THE COURT: Yes. Okay. And just to be clear,  
23 so the record is clear, you are asking the jury to  
24 deliberate on forfeiture, not submit it to me.

25 MR. FALKNER: Correct.

1 THE COURT: All right. I think we've covered  
2 everything.

3 Anything else?

4 MS. KRASINSKI: No, your Honor.

5 THE COURT: You're going first, you'll go, and  
6 then rebuttal. So good luck.

7 MR. FALKNER: Thank you, your Honor.

8 MS. KRASINSKI: All right.

9 CONCLUSION OF SIDEBAR

10 THE COURT: We're now going to hear closing  
11 arguments. First we will hear from the government.

12 Attorney Krasinski, go ahead.

13 MS. KRASINSKI: Thank you, your Honor.

14 Ladies and gentlemen, the defendant, Johnathon  
15 Irish, was proud of his guns. He carried that Sig Sauer  
16 1911 pistol. He showed off his Catamount Fury shotgun.  
17 And he had them despite the fact that he knew he had  
18 previously been convicted of a felony. He stored them  
19 in the case in the bedroom closet and he had the key.

20 And when things got heated in October of 2019,  
21 he tried to hide the guns and then he tried to cover up  
22 that he'd ever possessed them. But he did have them.  
23 He did possess them. And for that, Johnathon Irish is  
24 guilty of the unlawful possession of firearms.

25 Before we talk about the evidence in this

1 case and how it shows beyond a reasonable doubt the  
2 defendant's guilt, I want to briefly review the  
3 essential elements that you're going to hear, the  
4 elements that the government must prove beyond a  
5 reasonable doubt that the defendant committed this  
6 crime.

7 And the way I think of it is these essential  
8 elements, they become your checklist. So let's go  
9 through your checklist.

10 First, you have to find that we proved beyond  
11 a reasonable doubt that the defendant has been convicted  
12 in any court of at least one felony. That is, a crime  
13 punishable by imprisonment for a term exceeding one  
14 year; second, that he knew that he had been convicted of  
15 a felony; third, that after that conviction, he  
16 knowingly possessed the Sig Sauer rifle -- excuse me --  
17 the Sig Sauer pistol or the Catamount Fury shotgun; and,  
18 fourth, that those firearms, the pistol and the shotgun,  
19 were connected in interstate commerce.

20 And based on what you've seen and heard, the  
21 government has proved all of these elements beyond a  
22 reasonable doubt.

23 The first two are easy to dispense with. You  
24 know that he was convicted of a felony and you know that  
25 he had knowledge of it because the defendant has agreed

1 to this. That's Government's Exhibit 36. That's a  
2 stipulation. And in that stipulation, the defendant  
3 acknowledges both of those elements. And you'll have  
4 that stipulation back in the jury room with you.

5 The fourth element, interstate commerce. All  
6 that means is that the firearm moved from one state to  
7 another at any point. It doesn't need to have done it  
8 with the defendant, doesn't need to have been when he  
9 had custody of those items.

10 And you know that Government's Exhibit 7, the  
11 Catamount Fury shotgun, was manufactured in China,  
12 traveled or was imported into Vermont, and then was  
13 recovered in New Hampshire. And you know that based on  
14 Agent Forte's testimony. He talked to you about the  
15 markings on this gun. You know that this firearm  
16 traveled in interstate and foreign commerce.

17 Government's Exhibit 5, the pistol, again, you  
18 heard Agent Forte testify that he determined that this  
19 firearm was manufactured in New Hampshire, that after  
20 final assembly it was shipped to a retailer in  
21 Minnesota, and then after that, it was recovered here in  
22 New Hampshire. This firearm traveled in interstate  
23 commerce.

24 So now let's get to the heart of this case.  
25 Did the defendant, Johnathon Irish, knowingly possess

1 those two firearms?

2 The pistol. This was the defendant's gun. It  
3 was his gun in 2013 and when the FBI had to release  
4 custody of it, it was the defendant who identified  
5 Roscoe Whitney, who chose Roscoe Whitney, to take  
6 custody of this gun, the man that the defendant calls  
7 grandpa.

8 Then you heard Mr. Whitney testify that in  
9 2017, Mr. Whitney got an email from an email address  
10 with the defendant's name in it, some documents, and  
11 those documents seemed to Mr. Whitney to show that the  
12 defendant could now have his guns.

13 You know based on the stipulation that the  
14 defendant knew he had been convicted of a felony.  
15 Mr. Whitney was tricked. Mr. Whitney was duped into  
16 believing that he could give those guns back.

17 And why would Roscoe Whitney have to receive  
18 any documentation? Why would he have to be shown  
19 anything about the defendant and whether or not  
20 Mr. Irish could have guns if those guns weren't going  
21 back to the defendant? They were going back to the  
22 defendant. Roscoe Whitney told you he gave them back to  
23 the defendant. He said, we met at the campground; I  
24 gave those guns to the defendant; I gave those guns to  
25 Johnathon.

1           And you've heard that Johnathon Irish carried  
2   that Sig Sauer pistol. Elizabeth Millett told you he  
3   had it tucked in his waistband around the holidays,  
4   December of 2018. Mr. Marcotte told you that when he  
5   went to the defendant's home in Mr. Irish's time of  
6   need, the defendant said, I've got a 1911 in the  
7   bedroom.

8           I want you to think about this. Mr. Marcotte  
9   didn't say -- no testimony that the defendant said, my  
10   wife's gun is in the bedroom. No. Mr. Marcotte told  
11   you that what the defendant said is "I have a 1911 in  
12   the bedroom."

13           You heard Dylan Roosa testify that he saw the  
14   defendant carrying that pistol. You heard Dylan Roosa  
15   testify that he and Mr. Irish went to Mr. Irish's  
16   backyard and shot that pistol together. You heard  
17   Mr. Duguay describe to you the sounds that he heard when  
18   they were driving back from Mr. Duguay's hunting camp.

19           He told you he served in the Army. He has  
20   heard that sound hundreds, if not more, times. You  
21   don't confuse that sound with a bump in the road  
22   (demonstrating). You don't confuse that sound.

23           Now, the Catamount Fury shotgun. What did you  
24   learn from the testimony? That shotgun belongs to Tony.  
25   Tony was Mr. Marcotte's friend. Mr. Marcotte told you



1 he was Tony's Army dad. Mr. Marcotte told you that he  
2 met the defendant through Tony. They were both Tony's  
3 friends.

4 He told you he had seen this shotgun. In  
5 fact, he had fixed this shotgun when it still belonged  
6 to Tony.

7 He told you Tony had a truck, Big Red, and  
8 when Tony passed away, Johnathon Irish got Big Red.  
9 Johnathon Irish was driving Big Red around. And  
10 Johnathon Irish got that shotgun.

11 And when the defendant gave this case,  
12 Government's Exhibit 33, to Neil Prive, it had both  
13 Government's Exhibit 7, the shotgun, and Exhibit 5, the  
14 pistol -- both were in that box. Both were in that box  
15 when the defendant showed his gun collection off to  
16 Dylan Roosa.

17 Now, before we talk about the defendant's  
18 attempts to hide the guns and then hide his possession  
19 of the guns, I want to talk about the different forms of  
20 possession.

21 You're going to hear, when the judge instructs  
22 you, about actual possession, constructive possession,  
23 joint and sole possession.

24 Actual possession, you've got it in your  
25 hands. You're holding it.

1           Constructive possession, you have the ability  
2   to direct and control what happens to it.

3           I like to think about it in terms of a car. I  
4   got up this morning, got my keys, drove my car, parked  
5   halfway up the hill, because there's so many new meters  
6   here. When I'm driving that car, I'm in actual  
7   possession of my vehicle.

8           Now it's parked on the street. I've still got  
9   the keys. It's still the car that I can go access at  
10   any time. If I need to go drive somewhere, I've got the  
11   keys. I can go, I can get in that car. Even though I  
12   am not physically in the car right now, it is within my  
13   constructive possession.

14          And I just want to be clear. It doesn't  
15   matter whose name the car is in. It doesn't matter if  
16   there's a lienholder on the car. What matters is I've  
17   got the key and I can go use that car.

18          And sole possession, that means only one  
19   person has possession of an item. Joint possession,  
20   multiple people can share possession of an item, just  
21   like that car. You may have a vehicle that you share  
22   with your spouse. You have the keys, you can use it.  
23   Your spouse also has a set of keys and your spouse can  
24   use that vehicle. You share possession. It still  
25   might -- it's still in your possession even if, for

1 example, it's titled in your wife's name.

2 Now, you heard evidence about actual  
3 possession, right? That's the testimony about Mr. Irish  
4 carrying the pistol, shooting the pistol, showing the  
5 pistol off, showing the shotgun off, clearing the pistol  
6 in the car, physically moving the box with those  
7 firearms in it and giving that to his cousin. That's --  
8 that's actual possession.

9 But let's talk about his constructive  
10 possession of the guns. After he gave the guns to Neil,  
11 he arranged for them to go to Gary. You saw the texts  
12 in Exhibit 29C: Gary, it's Johnathon, please call me.  
13 And the next one: Gary, please pick up, man.

14 And you heard Mr. Roy a testify and you saw the  
15 text messages in Government's Exhibit 29D. And let's  
16 just briefly look at three of those.

17 Nancy Haskell giving Mr. Roy a Neil's number.  
18 And then Nancy Haskell, the defendant's mother, sending  
19 Gary Roy a this transfer document. And then Nancy  
20 Haskell telling Mr. Roy a: Please send it back; J is  
21 waiting for me to send it to him.

22 And Gary said he thought it was Nancy that was  
23 orchestrating the movement of these guns, but you know,  
24 based on the evidence that you heard, that it was  
25 Johnathon Irish who was directing his mother to

1 orchestrate the movement of these guns. And you know  
2 that because of what's -- because that's what the  
3 defendant said to his mother.

4 So you've seen these texts. Now let's listen  
5 to what the defendant has to say about these texts in  
6 his recorded call.

7 (Audio recording played.)

8 MS. KRASINSKI: I told you to call. I told  
9 you to call. I told you to arrange the movement of  
10 these guns from Neil to Gary. I controlled that. I  
11 controlled who these guns went to. That's constructive  
12 possession.

13 And what about the fake transfer document,  
14 Government's Exhibit 30? Why create this? Why have  
15 this? You know that Roscoe gave those guns back to the  
16 defendant. You know that once he gave those guns back  
17 in 2017, he never saw those guns again. You know that  
18 Roscoe didn't give those to Gary.

19 So why the smoke and mirrors? Why would  
20 Johnathon direct his mother to send some type of fake  
21 transfer document and ask everybody to sign it? The  
22 only reasonable inference is that he was trying to  
23 distance himself from the guns. He's trying to hide the  
24 fact that he had the guns.

25 Now, I expect you're going to hear a lot of

1 argument about witnesses who testified and why they may  
2 have reason to tell you tall tales. So let's go through  
3 that.

4 Elizabeth Millett testified that she saw the  
5 defendant with a pistol and that when her daughter took  
6 out a restraining order against the defendant, he asked  
7 his mother-in-law to take his guns.

8 And you heard that there's family drama. You  
9 heard that there's this landlord-tenant dispute; you  
10 heard that Stephanie made some claims about her brother;  
11 you heard about all these court proceedings.

12 You also heard that she provided this  
13 information and then she was signed up as a confidential  
14 source and that information never changed. If she was  
15 here trying to get her son-in-law in trouble, trying to  
16 do something, wouldn't you have expected her to tell a  
17 better story?

18 She sat there, she told you, yeah, I saw him  
19 carry it in his waist. I never saw him use it in a  
20 threatening way; I never saw him do anything like that.  
21 And then after he asked me if I would take the guns and  
22 I said no, he told me he had taken care of it. I didn't  
23 know if he had the guns or not. I didn't know.

24 If she was up here trying to get her  
25 son-in-law in trouble, if she was up here testifying out

1 of some ill will, don't you think she would have told  
2 you a more exciting, more embellished story than that?

3 And the same thing for Dylan Roosa. He told  
4 you about shooting the pistol with the defendant. He  
5 told you about the defendant opening this black box,  
6 about seeing all three of the firearms that were in the  
7 box. He told you that there was no lock on the box at  
8 that point, that they moved it into the bedroom, that  
9 the defendant opened up the case and they looked at all  
10 three of those guns.

11 And then at some point after he provided that  
12 information to law enforcement, he was also signed up as  
13 a confidential source. And he told you he received a  
14 payment of \$250 and he told you he didn't expect  
15 anything for his testimony, and his statements never  
16 changed. He never added to what he initially told law  
17 enforcement. He never said, oh, no, no, no, there's  
18 more.

19 If he was providing information, if he was  
20 hoping for additional payments, don't you think he would  
21 have come up with something else? He didn't.  
22 Everything he said stayed consistent from before he was  
23 signed up as a confidential source through when he  
24 received \$250 and after.

25 And, yeah, he had a falling out with the

1 defendant. But, again, everything he has said remains  
2 consistent.

3           And what real motive does Mr. Duguay have to  
4 tell you something that -- some tall tale? He told you  
5 the defendant was a hard worker, that he worked for him,  
6 that he worked hard, that he took care of his chickens,  
7 that he was his neighbor. He told you that after the  
8 FBI showed up, he was mad and their relationship  
9 changed. But he doesn't have any reason to come in here  
10 and tell you anything other than what he remembers, what  
11 he heard.

12           What about Mr. Marcotte? He doesn't have any  
13 motive to come in and tell you anything other than the  
14 limited information that he recalled; seeing that  
15 shotgun, knowing that it came from his friend Tony,  
16 seeing it with Tony, and hearing the defendant talking  
17 about the pistol, saying that Mr. Irish had that 1911 in  
18 his bedroom.

19           And you also heard all of them go through, say  
20 that they don't know any of the other people who were  
21 here. This isn't some big conspiracy to stick Mr. Irish  
22 with his wife's guns. None of those witnesses knew each  
23 other.

24           And think about the testimony from both Neil  
25 and Gary Roy. Both of them said that there was some

1 talk of using these guns as collateral for money. Both  
2 of them said that. They both said that other than  
3 meeting in a parking lot to exchange this case with  
4 those guns, they never talked to each other or saw each  
5 other again.

6 Is there a reasonable explanation, a  
7 reasonable inference, you can draw from that? The  
8 defendant asked that of both of them.

9 And how could he use as collateral something  
10 that's not his?

11 All of the evidence, all of the testimony that  
12 you've heard in this courtroom, demonstrates beyond a  
13 reasonable doubt that this pistol and this shotgun were  
14 Johnathon Irish's firearms and that he possessed them in  
15 2018 and 2019 and that he gave them to his friend Neil  
16 and then he directed and controlled their transfer to  
17 Gary Roy.

18 These aren't Stephanie's guns. You didn't  
19 hear any evidence that those were Stephanie's guns.  
20 They were Mr. Irish's guns. And I ask that you find the  
21 defendant guilty of unlawful possession of those  
22 firearms.

23 THE COURT: All right.

24 MR. FALKNER: Your Honor, may we be seen  
25 briefly?



1 THE COURT: Yes.

2 AT SIDEBAR

3 MR. FALKNER: I may be mistaken, but I believe  
4 that there was argument that Stephanie Irish took out a  
5 restraining order causing Elizabeth Millett to --  
6 causing Johnathon Irish to ask Elizabeth Millett to take  
7 the guns. There was no testimony at any time about  
8 Stephanie Irish ever taking a restraining order out.

9 MS. KRASINSKI: I believe Ms. Millett  
10 testified that on one evening the defendant called her  
11 because Stephanie had taken out an order and asked her  
12 to hold these guns.

13 She had taken a sleeping pill, she said she  
14 couldn't drive, when he called her the next day, that  
15 she agreed to get the kids and that he had said he had  
16 taken care of the guns.

17 MR. FALKNER: All of that is true except for  
18 the first part. There was never any testimony about a  
19 restraining order.

20 THE COURT: I don't -- I do not have a  
21 recollection of this. One of my instructions to the  
22 jury is the closings aren't evidence, I've already told  
23 them that, and that they are the factfinders and --

24 MR. FALKNER: My concern, though, your Honor,  
25 is that it's extremely prejudicial to suggest that

1 Stephanie Irish had taken out a restraining order  
2 against him at that time.

3 THE COURT: All right. You want me to  
4 highlight that and tell them that ultimately they are  
5 the factfinders and they find the evidence in the case  
6 and closing arguments, the statements by lawyers, are  
7 not evidence, something to that effect?

8 MR. FALKNER: I'm not sure that's sufficiently  
9 curative, but it certainly would be helpful.

10 THE COURT: Okay. I just -- I cannot recall  
11 whether or not there was testimony of her taking out a  
12 restraining order. You're telling me there was no  
13 testimony to that effect. I honestly -- I don't recall.  
14 I suspect the jury doesn't recall, but I'm happy to  
15 remind them that they are the factfinders and that this  
16 is not evidence.

17 I will highlight the fact that the government  
18 says Stephanie Irish took out a restraining order. I  
19 think that highlights that evidence that you don't want  
20 them focused on. I'll do that if you're requesting  
21 that.

22 MR. FALKNER: I am.

23 THE COURT: Okay.

24 MR. FALKNER: Thank you, your Honor.

25 THE COURT: All right.

## 1 CONCLUSION OF SIDEBAR

2 THE COURT: Ladies and gentlemen of the jury,  
3 you just heard in closing argument the government --  
4 Attorney Krasinski state that there had been evidence  
5 that Stephanie Irish had taken a restraining order out  
6 against Mr. Irish.

7 Let me just say to you that you are the  
8 factfinders. You will decide the evidence in this case.  
9 As I told you in my original instructions, closing  
10 arguments are not evidence. To the extent that your  
11 memory of the evidence on this issue is different, you  
12 control that question. You are the factfinders and you  
13 will decide the facts in this case.

14 Attorney Falkner.

15 MR. FALKNER: Good afternoon, ladies and  
16 gentlemen. I apologize for moving this cart around.  
17 I'm just trying to keep it as out of the way as I can  
18 while still being able to look at the computer.

19 The first thing that I just want to briefly  
20 say before I get into my argument is there was no  
21 evidence in this case that at any time Stephanie Irish  
22 ever took a restraining order out against Johnathon  
23 Irish. And I think when you go to your collective  
24 memory, you will recall that.

25 Getting into my argument, in this case, the

1     burden of proof is entirely on the government.  
2     Johnathon Irish has to prove nothing. The government  
3     has to prove all of these elements -- each of the  
4     elements that were described by the prosecutor and that  
5     will be described by the judge -- each of those beyond a  
6     reasonable doubt. That's a very high burden. And when  
7     you go back into that jury room, I ask that you hold the  
8     government to that burden.

9             And, again, it's on the government to prove  
10     that Johnathon Irish possessed those firearms. It's not  
11     on Johnathon Irish to prove that Stephanie Irish or  
12     anybody else possessed the firearms or even to prove  
13     that he didn't possess the firearms. It's entirely on  
14     the government to prove to you and to satisfy you based  
15     on the evidence that they've presented here in this  
16     courtroom.

17            And I want to -- I want to go through that  
18     evidence with you and try to explain to you why it is  
19     that when you look carefully at that evidence and  
20     scrutinize it and think about each piece of it and what  
21     does it actually mean, when you add it all up, it does  
22     not add up to proof beyond a reasonable doubt.

23            Johnathon Irish, as he sits here before you,  
24     is cloaked in the presumption of innocence until you go  
25     into that room and start to make up your minds. I would

1 ask you that if you've made up your mind already, if you  
2 were to make up your mind either during any of these  
3 closing arguments or even during the jury instructions,  
4 please set it aside, go into that room. When you all  
5 start to deliberate, that's when you need to start to  
6 make up your mind.

7 And as the judge will instruct you, it's your  
8 memory of the evidence that controls. Nothing that I  
9 tell you is a substitute for the evidence. I'm trying  
10 to give you my best memory as best I can and I know that  
11 the attorney for the government did the same, and nobody  
12 has a perfect recollection. So I'm just trying to guide  
13 you through the evidence to point out the places where  
14 the evidence doesn't hold up and the places where the  
15 evidence does fit together.

16 Where I'd like to start is with the interstate  
17 commerce. The government has to prove beyond a  
18 reasonable doubt as to each of these firearms, as to  
19 this pistol that was manufactured in the state of  
20 New Hampshire, the government has to prove to you beyond  
21 a reasonable doubt that this firearm left the state of  
22 New Hampshire at some point before this alleged  
23 possession by Johnathon Irish.

24 This rifle here is off the table. It wasn't  
25 illegal for Johnathon Irish to possess that rifle.

1 You're not here to decide that. The rifle, after it was  
2 assembled, never left the state of New Hampshire. And  
3 you heard that even from the government's so-called  
4 expert.

5 This, the shotgun, there is no dispute that  
6 this was in interstate commerce. We know it was  
7 manufactured in China. You can see that from the  
8 markings on it itself. It even says where it was  
9 imported to, in Georgia, Vermont. There's no dispute  
10 that that shotgun came into the United States.

11 The question is did the jury -- did the  
12 government prove to you beyond a reasonable doubt that  
13 that pistol left the state of New Hampshire.

14 The only evidence presented is Agent Forte.  
15 Think carefully about Agent Forte's testimony. He took  
16 a test, they trained him. And what did they train him  
17 to do? His job? He looks at the markings on  
18 firearms -- he's been trained what the markings mean --  
19 but you can look at those markings -- and then he looks  
20 up in a database -- anybody can look up records in a  
21 database -- he sees what those records say. Then he  
22 emails the company and he gets an email back from the  
23 company that says, oh, yeah, we shipped that one out to  
24 some sporting goods company. That's all he does.

25 You don't have any of those records before

1 you. There's no records from Sig Sauer showing when it  
2 was manufactured, how it was manufactured, what was done  
3 with it. You don't have any shipping labels, bills of  
4 lading, all the kinds of things that you see when items  
5 are shipped. None of that. You don't have anything at  
6 all to show you that that gun ever left the state of  
7 New Hampshire.

8           It was sent, according to the records that you  
9 don't have but were told to you by somebody who read  
10 them, that they went to Reeds Sporting Goods in  
11 Minnesota. He didn't even bother to call Reeds Sporting  
12 Goods to see if they ever got the gun.

13           I would suggest to you that on his testimony,  
14 you cannot find beyond a reasonable doubt that that gun  
15 was shipped in interstate commerce.

16           If they had records showing when it was sent,  
17 when it was received, that would be one thing. You  
18 don't even have those records. You just have somebody's  
19 say-so that they looked at records. And they didn't  
20 even confirm that it went where it supposedly went.

21           There's another thing I'd like to talk about  
22 with regard to the interstate commerce. This is  
23 emblematic of most of the witnesses the government  
24 called.

25           Almost every witness the government called

1 likes to give you some of the information, but not all  
2 of the information. It's all just a little bit skewed.

3 One of the first witnesses that the government  
4 called was Agent Phil Christiana. And Agent Christiana  
5 told you that he had seized the pistol and the rifle at  
6 one point from Johnathon Irish and at some point he  
7 returned those to Roscoe Whitney, along with  
8 instructions that you shouldn't give these weapons back  
9 to Johnathon Irish because it would be illegal.

10 Well, there's two problems with that. I'm  
11 sorry. There's another part of his testimony.

12 Then he sat there on this witness stand, a  
13 federal law enforcement agent charged with enforcing the  
14 ban on possession of weapons shipped in interstate  
15 commerce by felons, and he didn't tell you it would be  
16 illegal for Johnathon Irish to possess weapons that were  
17 shipped in interstate commerce; he said it would be  
18 illegal for Johnathon Irish to possess any firearms at  
19 all. Not true. A federal law enforcement agent  
20 couldn't even acknowledge that it was not illegal for  
21 Johnathon Irish to possess firearms that were not  
22 shipped in interstate commerce.

23 You're going to hear the elements of the crime  
24 from the judge. The judge will tell you the law. And  
25 even the government acknowledges that they have to prove



1 that the firearms were shipped in interstate commerce.  
2 But yet Agent Christiana on that witness stand said  
3 Johnathon Irish can't possess any firearms at all, and  
4 it was not true.

5 Now, I want to talk to you a little bit about  
6 the missing evidence in this case. I already talked to  
7 you a little bit about some of the missing evidence as  
8 regards to interstate commerce, but I'd like to talk to  
9 you about some of the other missing evidence.

10 Much adieu about this 30-second telephone or,  
11 well, in-person visit. Detective LeBlanc or Task Force  
12 Officer LeBlanc, from Johnathon Irish's arrest in  
13 December of 2019 up until today, sat and listened to  
14 every telephone call, every visit, that Johnathon Irish  
15 had with any person other than his attorney from that  
16 time up until we get to this trial. Everything.  
17 Imagine every telephone call that you make, every word  
18 that you speak to anyone -- your mother, your brother,  
19 your friends -- every single word that you speak is  
20 being listened to and monitored by the government.

21 And you hear this one 30-second clip, as if  
22 that tells you anything that you need to know about  
23 Johnathon Irish's intentions and motives, one 30-second  
24 clip out of all of that, all of his communications with  
25 anybody besides his attorney. It's what I would call

1 cherry-picked.

2           What's also cherry-picked? The fingerprints.  
3 No fingerprints are ever done. Why -- why don't you do  
4 fingerprints? When the government was asking Agent  
5 Tongbua, why don't you fingerprint the gun, well, it  
6 doesn't matter; we already know the guns belong to  
7 Johnathon Irish. Okay. Well, it's been through many  
8 hands. We don't -- we don't know if the fingerprints  
9 would even still be there.

10           When I asked him on cross-examination  
11 questions about the fingerprints, for the first time you  
12 hear him say, oh, I don't know; I'm not a fingerprint  
13 expert; I don't know anything about how long the  
14 fingerprints last.

15           Why the evasion? Why -- why is everything  
16 slanted just a little bit from all of these witnesses?

17           Not just slanting. Let's -- let's talk about  
18 the corruption of this case. Let's talk about Dylan  
19 Roosa. And I don't mean corruption in the legal sense.  
20 I mean just things that make this evidence something  
21 that you should be very skeptical of.

22           Dylan Roosa, he complains about money. He  
23 doesn't have any money. And that comes up in two ways  
24 for Dylan Roosa. The first way it comes up is he's such  
25 good friends with Johnathon Irish that they end up

1 having this fight that blows up their entire friendship  
2 over a 20 to \$30 debt.

3           Okay. So that seems unreasonable, but when  
4 he's interviewed by the FBI, he doesn't tell them that  
5 was what the fight was about at all. And he says -- he  
6 tells the FBI, we had a fight, actually, about  
7 accusations that Johnathon Irish was cheating on  
8 Stephanie Irish. That's why -- that's what he tells the  
9 FBI; that's what we had a fight about, and that's why  
10 I'm no longer friends with him. He doesn't say we had a  
11 fight about money.

12           But they want to meet with him again and talk  
13 to him and get some more information from him. And he  
14 says, you know what, I don't have the gas money. I  
15 don't have the gas money to go 60 miles out of my way  
16 round-trip to come meet with you. He's complaining  
17 about his finances. He needs money.

18           I'm not -- I don't in any way mean to diminish  
19 the cost of gasoline. It's important to all of us. But  
20 he's talking about meetings with the FBI and he's  
21 telling them, I can't meet with you because it's too  
22 expensive for me to drive. And, magically, \$250 shows  
23 up.

24           He didn't ask for the money beforehand. He  
25 didn't say, I need \$250; if you give me \$250, I'll talk

1 with you. That's not the way it works. He didn't ask  
2 ahead of time to get paid for his testimony before you.

3 They haven't told him ahead of time exactly  
4 how much or whether he will get his money. But it sure  
5 as heck is understood. I met with you, I got \$250. I  
6 drive all the way down to Concord from North Stratford.  
7 It's already 30 miles south just to get to Littleton,  
8 and then from Littleton all the way down here to Concord  
9 in this courtroom.

10 That was a tank of gas for him, wasn't it?  
11 We'll never know. You'll never know how much he's going  
12 to be paid for his testimony in this courtroom. Because  
13 once you're all done, there'll be meetings with Agent  
14 Tongbua and AUSA Krasinski and they'll get together and  
15 they'll decide how much money, if any, they should give  
16 to Dylan Roosa. But don't think that Dylan Roosa's not  
17 counting on it. You know that he is.

18 Elizabeth Millett, she wants Johnathon Irish  
19 out of the picture. She's told you she's got a strained  
20 relationship with Stephanie. She thinks Johnathon Irish  
21 is keeping Stephanie away from her. It is a huge family  
22 feud.

23 Stephanie Irish has taken out restraining  
24 orders against her brother who's living with Elizabeth  
25 Millett. Elizabeth Millett is upset because she's

1 financially drained by caring for the couple. She feels  
2 that Stephanie isn't in contact with her anymore. She  
3 even goes so far as to get restraining orders against  
4 both Johnathon and Stephanie.

5 And they're in engaged in ongoing court  
6 proceedings about the house, this landlord-tenant  
7 complaint. Johnathon and Stephanie have complained  
8 about her care of the property that they're living in,  
9 so much that she decides, she says, that she wrote a  
10 deed just to get them out of her hair. And this is all  
11 shortly before, about a month or two, before ultimately  
12 Stephanie leaves Johnathon.

13 But it's clear she wants Johnathon Irish out  
14 of the picture and now she's gotten what she wants.  
15 Stephanie is out of there and now she needs to make sure  
16 that Stephanie and Johnathon end up away from each  
17 other, which leads me to Stephanie Irish.

18 Besides -- what person could the government  
19 have called who could be more insightful as to whether  
20 Johnathon Irish was in possession of those firearms than  
21 Stephanie Irish? Think about this. She leaves  
22 Johnathon on October 25th of 2019. Their marriage is  
23 caput. They're in divorce proceedings. She's in almost  
24 constant contact with Agent Tongbua. She's cooperating  
25 with them, she's giving them information that they find

1 truthful, information that they say helps them with  
2 their investigation. And you heard Agent Tongbua say  
3 that; she was giving us information that was truthful,  
4 she was giving information that was helpful to our  
5 investigation.

6 Then where is she? Why didn't the government  
7 call her as a witness? Is it -- is it that like the  
8 other witnesses, she has a motive to make it look bad  
9 for Johnathon Irish? She was in contact with the FBI on  
10 October 26th of 2019. She leaves the house, she leaves  
11 the guns in the house, and she calls the FBI. That's  
12 called being framed.

13 Now, Peter Duguay. Peter Duguay testifies, I  
14 was friendly with Johnathon; we're such great friends;  
15 it was -- he's such a hard worker. He's got nothing but  
16 love for Johnathon Irish. That's what he tells you here  
17 on the witness stand; they're friends, and all that  
18 matters to him is just telling the truth. Hey, he  
19 worked for me, he liked to talk about guns, but he's a  
20 hard worker, I like him, I was a little upset about that  
21 incident in the truck when he was racking the firearm,  
22 but, you know, a good guy.

23 If that testimony were true, why would  
24 the first thing he says to the FBI be we had a  
25 keep-your-enemies-close kind of relationship? Is that

1 the kind of thing that you say about your friends? The  
2 FBI came and interviewed you about a good friend who you  
3 work with and is a hard worker and you share meals with  
4 and visit at the home, the first thing you say to them  
5 is it's a keep-your-enemies-close kind of relationship?  
6 I don't think so. They're not friends.

7 David Marcotte -- I want to clear one thing  
8 up. David Marcotte never, never said that Tony Costello  
9 gave that gun to Johnathon Irish. He didn't say that.  
10 He said Johnathon Irish drove the truck that Tony  
11 Costello used to have and Johnathon fixed it. True.

12 He said that used to be Tony Costello's gun.  
13 That's what he told you. He didn't say what the  
14 government told you he said. He didn't say that that  
15 gun was given by Tony Costello to Johnathon Irish. He  
16 didn't know anything -- the only thing he knew about  
17 that gun was that it used to be Tony Costello's and that  
18 he had fixed it. He now, when presented with that gun,  
19 says, I recognize that gun, that's Tony's old gun.  
20 That's the information you got from him.

21 Just because Tony Costello gave Johnathon  
22 Irish a truck does not mean that he gave Johnathon the  
23 shotgun. One does not equal the other. We don't know  
24 whether he gave it to Stephanie, we don't know whether  
25 Johnathon knew whether it was in that trunk or not.

1 Gary Roy, who you just heard from today,  
2 Nancy -- he says that Nancy Haskell was driving the bus  
3 on all of this. Nancy tells him Roscoe is in charge of  
4 the weapons; Nancy's the one that's telling him about  
5 signing the paperwork; Nancy says Johnathon is waiting  
6 for the paperwork. Johnathon, his text message, says  
7 something along the lines, we need to get this  
8 information for Stephanie.

9 Now, I want you to think carefully about Gary  
10 Roy's testimony and whether it made a whole lot of  
11 sense. Oh, I'm just a simple guy, he says; I didn't  
12 know any better; when they presented me with the  
13 transfer document, the transfer document that said I was  
14 getting this gun and this gun and various ammunition, I  
15 didn't think anything about it, I just went ahead and  
16 signed it. I just wasn't -- wasn't careful about it.

17 But that's just not true. He's a very careful  
18 guy. He's not simple. Everything he did was calculated  
19 and planned. The first thing he did with that box when  
20 he got home was open it up and inventory, a detailed  
21 inventory. The inventory included the shotgun, all the  
22 various ammunition, the chemical suit, the BB gun,  
23 various other things. A detailed inventory that he  
24 takes the moment he gets home with that.

25 But yet he's presented with this transfer and



1 oh, well, that looks close enough and just signs it.  
2 It's the wrong date. Everything's wrong about it.

3 And he says it's collateral for \$300. Why  
4 would he need a bill of sale if he's just holding on to  
5 it to make sure he gets his 300 bucks back? Especially  
6 when he says he didn't even care about the \$300. Would  
7 you take a box full of guns as collateral for a \$300  
8 loan that you didn't even care about? It doesn't make a  
9 whole lot of sense to me. And if his testimony is, hey,  
10 I'm just a simple guy, that's belied by his actions.

11 When Johnathon Irish sends him a text message  
12 saying, hey, I need to let Stephanie know this  
13 information, his response is, you need to stop  
14 telling -- giving people information. That's the Gary  
15 Roy, the simple Gary Roy, that's on the witness stand,  
16 right? The one who doesn't know anything better. The  
17 one that sends the text message saying, you need to shut  
18 up; nobody needs to know where these guns are. Or maybe  
19 he's just worried about thieves. I don't know how  
20 thieves are going to find out about his communications  
21 directly with the person he's supposedly getting the  
22 firearms from.

23 Just returning to -- I just want to go through  
24 with you a couple of last points about trustworthiness  
25 of the various information you've seen and about how

1 everything is slanted just a little bit in the  
2 government's favor in this case, or maybe even just a  
3 lot. You have to determine how much it's slanted.

4 Peter Duguay sees -- says, I heard the  
5 firearm being racked. The demonstration you got  
6 (demonstrating) -- Peter Duguay says, no, it wasn't  
7 quite that loud; it wasn't quite that fast. But -- but  
8 you got a show. That's what this all is. It's just a  
9 show. You got the show (demonstrating).

10 That wasn't the testimony about what he did.  
11 Even assuming that you buy that that testimony is true,  
12 David Marcotte showed you something. It wasn't quite  
13 that dramatic, was it? David Marcotte showed you how to  
14 do the clearing. Didn't -- wasn't a big show like it  
15 was from the government.

16 Now, the last point about Elizabeth Millett's  
17 testimony, she tells the FBI that Johnathon's walking  
18 around with the firearm tucked into his waistband and  
19 she's seen that. That's what she says. And she tells  
20 that to the FBI in January of 2019.

21 Then she goes out to get a restraining order  
22 in April of 2019 and when she signs up for that  
23 restraining order, she's asked whether the defendant,  
24 meaning Johnathon Irish, vis-a-vis that restraining  
25 order, whether Johnathon Irish has access to any

1 firearms. She checks off no, he had owned one in the  
2 past. Well, we all know he owned one in the past. The  
3 FBI took it all those years ago.

4 But yet the same day she's swearing out a  
5 complaint in a court under oath saying, no, he doesn't  
6 have access to a firearm, but he's had one in the past,  
7 she's on the phone with Agent Tongbua saying he's got  
8 the guns; they're in a chest in his bedroom. Which one  
9 is the truth?

10 Well, it's up to the government to prove  
11 beyond a reasonable doubt that it's one of the two, but  
12 the government's witness isn't able to keep that same  
13 story straight.

14 The last witness I'd like to talk about is  
15 Dylan Roosa. We talked a little bit about the money.  
16 Dylan Roosa, the only witness anywhere in this trial  
17 that's actually put one of these guns into Johnathon's  
18 hands, he says, oh, he lays the firearms all out, he's  
19 so proud of them, he's showing us all the firearms, and  
20 we went out into the woods and we're shooting at the  
21 tree and all this stuff, the same Dylan Roosa who's  
22 probably going to get paid for his testimony.

23 And he sits there on the stand and the very  
24 agent who -- Agent Tongbua, who was the -- who is the  
25 case agent in this case and who's signed him up as a

1 confidential informant -- he's asked, who is Agent  
2 Tongbua, and he points to someone off in the audience.  
3 There's a reliable witness. He can't even identify his  
4 own FBI agent.

5 Now, I told you that was the last witness.  
6 There's one more witness.

7 David Marcotte. We talked a little bit about  
8 Marcotte's testimony about the shotgun, but there's one  
9 last piece of Marcotte's testimony I think that's both  
10 important and illustrative.

11 Marcotte goes over the day that Johnathon's  
12 wife has left him. Johnathon's in the driveway; he's  
13 distraught, he's upset, and he suggests that he might  
14 harm himself, as one might be when their spouse leaves.  
15 And Marcotte asks if there's any weapons. And he says,  
16 Johnathon Irish says, there's a 1911 in the house.  
17 There was, because Stephanie left it behind.

18 He -- Marcotte didn't say -- he did not  
19 testify that Johnathon Irish said, I've got a 1911 in  
20 the bedroom. That's not what he said. He said, there  
21 is a 1911 in the house or the bedroom.

22 Well, that makes a big difference. I've got,  
23 or there is one. There is one, but he didn't say I've  
24 got it.

25 When you go back and you carefully examine all

1 of this evidence, when you put it all together, I would  
2 ask you -- I would suggest that you not find and you  
3 can't find beyond a reasonable doubt that Johnathon  
4 Irish was in possession of these weapons.

5 And that's the test. You have to determine,  
6 again, returning to this very heavy burden of proof to  
7 overcome his presumption of innocence that he possessed  
8 these weapons; that he had the intention and ability to  
9 control them, that he didn't want to just get rid of  
10 them and get them out of the house; and in particular  
11 with regard to the pistol, that it actually traveled in  
12 interstate commerce.

13 I would suggest when you deliberate that you  
14 will not be able to find the elements of this crime have  
15 been met and I ask that you find Johnathon Irish not  
16 guilty.

17 THE COURT: Attorney Krasinski --

18 MR. FALKNER: Thank you.

19 THE COURT: -- any rebuttal?

20 Thank you, Attorney Falkner.

21 MS. KRASINSKI: Briefly, your Honor.

22 THE COURT: All right.

23 MS. KRASINSKI: First, I'd submit that the  
24 evidence that you heard demonstrated that Dylan Roosa is  
25 not the only witness that put the defendant in physical

1 possession of those guns. So did his cousin, Neil; so  
2 did Elizabeth Millett; so did Roscoe Whitney, when  
3 Roscoe Whitney sat there and told you he handed those  
4 guns, the pistol and the rifle, back to the defendant.

5 Now, the defendant faults the government for  
6 not calling Stephanie Irish as a witness. What would  
7 she have added?

8 When Mr. Roosa told you that he shot that  
9 pistol out with the defendant in the backyard, he told  
10 you Stephanie Irish wasn't there; she was inside with  
11 Mr. Roosa's wife and all their kids. She wasn't outside  
12 with them. She wasn't there. What would she have added  
13 to that?

14 When Peter Duguay told you about Mr. Irish  
15 clearing the gun in the car, he told you they were the  
16 only two people in the car. What would Stephanie Irish  
17 have added to that testimony? Nothing.

18 When the defendant told David Marcotte --  
19 you've heard Mr. Marcotte testify -- that there's a 1911  
20 in the bedroom, Stephanie Irish wasn't there. What  
21 would she have added to that?

22 And as it relates to the Catamount Fury rifle,  
23 you are allowed to draw reasonable inferences from the  
24 testimony that you heard on the stand. You heard  
25 Mr. Marcotte tell you that he'd seen that shotgun

1 before, that it was his friend Tony's. You heard him  
2 tell you that Tony had Big Red. You heard him tell you  
3 that Johnathon Irish got Big Red. You are absolutely  
4 allowed to draw reasonable inferences from that  
5 testimony and the only reasonable inference from that  
6 testimony is that the defendant got that shotgun from  
7 his friend Tony.

8           The defendant argues that he's being framed.  
9 If he's being framed, why would he have called Neil and  
10 asked Neil if Neil had wiped the guns down?

11           Why would he have called Gary and asked for  
12 one of the guns back?

13           Do you really think that Elizabeth Millett is  
14 lying and Gary Royce is lying and Roscoe Whitney is lying  
15 and Peter Duguay is lying and David Marcotte is lying?  
16 All of them?

17           I submit that there is a much simpler  
18 explanation, and that explanation is that the defendant  
19 possessed those guns.

20           I'd just ask you to consider one other thing.

21           Who had the key? The only evidence you heard  
22 about this key was from Neil, who told you that it was  
23 the defendant, Johnathon Irish, who gave him this key.  
24 Who had possession of the gun in the box? Who had  
25 possession of the pistol and the shotgun? The person

1 with the key, Johnathon Irish.

2 Thank you.

3 THE COURT: Thank you. All right. Thank you,  
4 Attorney Krasinski.

5 We are now going to take our lunch break. We  
6 will be back at 1:30 and then I will give you the jury  
7 instructions. You'll have a copy of them and I will  
8 read them to you as well. Then you will go into the  
9 jury deliberation room finally for your deliberations.

10 So until you have begun your deliberations  
11 after I give you jury instructions, until that point,  
12 you need to continue to follow my instructions and you  
13 need to not talk to one another about the case in any  
14 way.

15 So we'll be back at 1:30. I'll give you  
16 instructions and then will begin deliberating.

17 Thank you.

18 THE CLERK: All rise for the jury.

19 (Jury excused.)

20 THE COURT: All right. Anything counsel  
21 wants?

22 All right. Any final issues with respect to  
23 the jury instructions, I'll make sure to check in with  
24 you about that. I'm going to have those final printed  
25 based on everything we talked about.



1 All your objections are noted and preserved,  
2 Mr. Falkner.

3 Is there anything --

4 MR. FALKNER: Will I be at least just given an  
5 opportunity to object to them after they're given?

6 THE COURT: Yes.

7 MR. FALKNER: Thank you.

8 THE COURT: Anything further?

9 MS. KRASINSKI: No, your Honor.

10 THE COURT: All right. See you at 1:30.

11 (Lunch recess taken at 12:44 p.m.)  
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## C E R T I F I C A T E

I, Liza W. Dubois, do hereby certify that the foregoing transcript is a true and accurate transcription of the within proceedings, to the best of my knowledge, skill, ability and belief.

Submitted: 3/27/2020

/s/ Liza W. Dubois  
LIZA W. DUBOIS, RMR, CRR